



City Council Committee of the Whole

AGENDA

June 15, 2015

6:30 pm – 10:00 pm

Call to Order

Public Comment

Note: *This is an opportunity for the public to address the Council. Three-minutes limit per person or five-minutes if representing the official position of a recognized community organization. If you would like to show a video or PowerPoint, it must be submitted or emailed by 5 pm, the end of the business day, to the City Clerk, Melonie Anderson at manderson@sammamish.us*

Topics

- Initiative & Referendum Discussion
- Comprehensive Plan Update
 - Environment Element Discussion

Executive Session - Personnel pursuant to RCW 42.30.110(1)(g) and Litigation pursuant to RCW 42.30.110(1)(i)

Adjournment



Memorandum

Date: June 10, 2015

To: Sammamish City Council

From: Lyman Howard, Deputy City Manager

Re: Background Material for Council Discussion on Initiative & Referendum

Background:

Last fall and early this year, the City Council studied the issue of granting the powers of Initiative and Referendum to the citizens of Sammamish.

The powers of Initiative and Referendum would allow the citizens to directly exercise the authority to enact and repeal laws for a set of allowable areas or topics.

The City Council placed an advisory ballot issue on the April 28th, 2015 election to determine the support among voters for this authority.

A majority of voters participating in the election voted for the Advisory Proposition to be able to exercise the powers.

Council directed staff to facilitate a discussion on this topic as a follow-up to the election.

Attached is background material including a presentation from the 2015 City Council Retreat and an accompanying memo dated January 22, 2015. Also, included is example code language from the cities of Mill Creek and Olympia.

Staff will give a brief overview on the topic with answers to additional questions posed. Legal Counsel will be on hand to answer technical questions that may arise.

Overview on Initiative & Referendum Powers

Presented to the Sammamish City Council
2015 City Council Retreat



Interest by citizens

- ▶ There is increasing interest by some citizens to directly exercise the authority to enact and repeal laws.
- ▶ This authority is exercised through the powers of initiative and referendum.
- ▶ An **initiative** is the ability of the voters in a City to initiate and enact legislation directly, without passage by the City Council.
- ▶ A **referendum** is the right of the City's voters to have an ordinance that has been passed by the City Council submitted to the voters for their approval or disapproval before it becomes effective (30 days after passage).

Statistics

- ▶ 50 of the 191 code cities have the powers of initiative and referendum (26%)
- ▶ Sammamish is the 6th largest code city without this power
- ▶ The larger code cities without this power include:

Kirkland	81,730
Kennewick	76,410
Auburn	73,235
Pasco	65,600
Marysville	62,100

Observation

- ▶ Generally, the more populous cities and counties have adopted these powers in either their charters or by city council action.

Arguments for

- ▶ Common arguments for adopting the powers of initiative and referendum include:
 - ▶ Allowing for direct democracy rather than representative democracy;
 - ▶ Neutralizing special interest groups;
 - ▶ Curtailing corruption; and
 - ▶ Putting pressure on public officials to act in the public interest.

Arguments against

- ▶ Common arguments against adopting the powers of initiative and referendum include:
 - ▶ The need for knowledge and deliberation in the passing of legislation and the daily business of the local government;
 - ▶ The powers undercut representative democracy by taking legislative power out of the hands of the elected representatives;
 - ▶ Special interest groups may sway voters with misleading advertisements;
 - ▶ Initiatives may not be well drafted and therefore difficult to implement; and
 - ▶ Initiatives may not provide the funding needed for mandates included in an ordinance.

Types of legislation not subject to I & R

▶ Ordinances only

- ▶ I & R powers do not apply to resolutions or motions.

▶ State statute excludes the following ordinances from the power of referendum:

- ▶ Emergency ordinances necessary for the immediate preservation of public peace, health, safety or for the support of city government and its public institutions;
- ▶ Ordinances providing for local improvement districts;
- ▶ Ordinances providing for or approving collective bargaining;
- ▶ Ordinances providing for the compensation of or working conditions of city employees;
- ▶ Ordinances authorizing or repealing the levy of taxes;
- ▶ Ordinances initiated by petition; and
- ▶ Ordinances appropriating money.

Types of legislation not subject to I & R

- ▶ Washington court decisions exclude the following ordinances from the powers of I & R:
 - ▶ When the state legislature explicitly grants the **authority to the City Council** (the "corporate authorities" of the city) an ordinance is not subject to I & R.
 - ▶ When the authority was granted to the **City** as a "corporate entity" the ordinance is subject to I & R.

Types of legislation not subject to I & R (continued)

- ▶ Washington court decisions exclude the following ordinances from the powers of I & R:
 - ▶ When an ordinance is **administrative** in nature is it not subject to I & R, but when an ordinance is **legislative** it is subject to I & R.
 - ▶ An ordinance is considered legislative when it relates to subjects of a permanent and general character, when it prescribes a new policy or plan.
 - ▶ An ordinance is considered administrative when it relates to subjects of a temporary and special character, when it merely pursues a plan that has already been adopted.

Methods of acquiring the I & R powers

▶ Direct Petition Method.

- ▶ A petition must be signed by registered voters representing at least 50% of the votes cast at the last general municipal election.
- ▶ Petition is filed with the city clerk who sends the petition to the County Auditor for a determination of whether the petition is sufficient.
- ▶ A petition found to be sufficient is filed with the City Council. The City Council must pass a resolution declaring that the voters of the city have decided to provide for the powers of initiative and referendum.
- ▶ The resolution must be published in a newspaper of general circulation.

Method of acquiring the I & R powers (continued)

- ▶ A 90-day waiting period follows to see if a second "referendum" petition, signed by 10% of the votes cast in the last general election, is filed to force an election on the I & R issue.
- ▶ If no referendum petition is filed within 90 days, the City Council must adopt the powers of initiative and referendum by ordinance.
- ▶ If a referendum petition is filed and found sufficient there must be an election on the issue.
- ▶ The powers will be adopted if a majority of those voting on the issue favor adoption of the powers.

Methods of acquiring the I & R powers (continued)

▶ Resolution Method.

- ▶ The majority of the city council may pass a resolution to provide for the powers of initiative and referendum.
- ▶ The resolution must be published and is subject to a referendum petition being filed within 90 days.
- ▶ If no referendum petition is filed, the City Council will pass an ordinance adopting the powers of initiative and referendum.
- ▶ If a referendum petition is filed containing signatures of 10% of the votes cast in the last general election of the City there must be an election on the issue.
- ▶ The powers will be adopted if a majority of those voting on the issue favor adoption of the powers.

Questions

- ▶ Question: May a city adopt the power of referendum without the power of initiative or visa versa?

Answer: No, the powers of initiative and referendum are exercised together.

- ▶ Question: May an initiative adopted by city voters be later repealed by the city council without voter approval?

Answer: No, an initiative may only be repealed or amended by a vote of the people.

- ▶ Question: If a code city Council passes an initiative without alteration, rather than submitting the ordinance to a vote of the people, can the council thereafter amend or repeal the ordinance?

Answer: No, any subsequent repeal or amendment must be approved by the voters.

- ▶ Question: How do the topics subject to the power of Initiative differ from those subject to referendum?

Answer: The subject matter or topics of initiative is the same as for referendums.

How the powers are exercised

▶ Initiative.

- ▶ Voters may initiate an ordinance using the powers of initiative by filing a petition with the City Clerk.
- ▶ The petition requires signatures of registered voters equal to 15% of the number of registered voters in the city (1776).
- ▶ Those signatures must be verified by the County Auditor.
- ▶ The City Council must either pass the ordinance within 20 days of the clerk's certification of the petition, or submit the ordinance to the voters at a general or special election.

How the powers are exercised (continued)

▶ Referendum.

- ▶ Voters may have an ordinance that has been passed by the City Council referred to the voters for affirmation or rejection at an election by filing a petition with the signatures of registered voters equal to **15%** of the number of registered voters in the city.
- ▶ The petition must be filed within 30 days of City Council passage
- ▶ The signatures must be verified by the County Auditor.
- ▶ If a valid petition is filed seeking a referendum, the ordinance passed by the City Council does not go into effect until it has received a majority of the votes cast at the election.

Litigation related to I & R

- ▶ Mukilteo Citizens for Simple Gov't v. City of Mukilto, 174 Wn.2d 41 (2012), the authority to determine the use and operation of red light cameras in a city was given to the City Council, therefore an initiative was invalid that would have required a 2/3rds vote of the electorate to install red light cameras.
- ▶ 1000 Friends of Washington v. McFarland, 159 Wn.2d 165 (2006), ordinances are not subject to referendum when they were enacted by the City Council under authority of the Growth Management Act.
- ▶ LIMIT v. Maleng, 874 F.Supp. 1138 (1994), it is an unconstitutional restriction on the freedom of political speech to prohibit the payment of petition signature gatherers. Payment may be either a flat fee or on a per-signature basis.
- ▶ Clallam County Superior Cause No. 14-2-00771-2, trial court ruled on summary judgment that the authority for private union negotiations and all aspects of collective bargaining are powers granted to the Sequim City Council. An ordinance proposing that labor negotiations with City employees be done in public was beyond the scope of initiative powers. Similar cases were filed against the cities of Blaine, Chelan, and Shelton.

Experiences of Our Peer Cities

- ▶ Redmond: Tim Eyman submitted a petition against Red-light Cameras. Redmond determined that the subject matter fell under police regulations which jurisdiction lies with the City Council. Petitioner appealed to the Court. Court agreed with the city. (A parallel lawsuit was filed regarding the legality of red-light cameras.) Court ultimately found they violated 1st Amendment Rights and cameras not allowed. This was the only initiative filed since powers adopted in 1982.
- ▶ Issaquah: Valid petition received in 2013 to repeal ban on plastic bags. (2012 effort wasn't sufficient.) Council directed the repeal to a vote of the people for Feb 2014 election. Item was not repealed and ban remains in effect. This was the only petition received in recent memory...last 20+ years
- ▶ North Bend: No Petitions filed

Experiences of Our Peer Cities (Continued)

- ▶ Lynnwood: Currently experiencing an active petition to repeal ban on fireworks. In December signatures totaling 4740 submitted. County certified and accepted only 2195, striking the balance. County sent a certificate of insufficiency to organization with 10 days to collect sufficient balance. They have replied with 843 additional signatures. Elections office is reviewing. This is the only petition filed in recent memory (15 years).

Costs

- ▶ Question: Who pays for the verification of signatures by the County Auditor?
Answer: Thus far King County has not charged for their work to validate the signatures associated with a petition related to initiatives or referendums.
- ▶ Question: What is the typical cost to defend the city in a disputed I & R case?
Answer: Our City Attorney estimates the typical cost to be between \$10,000 and \$20,000.
- ▶ Question: What is the cost of an initiative or referendum placed before the voters?
Answer: The cost will be the same as any other ballot item placed on a ballot. It is dependent upon the number of items on the ballot and the number of entities placing items on the ballot. A rough figure would be \$30,000 to \$40,000.

Petition Timelines for Elections?

- ▶ I & R elections may only be held on Specific Dates
- ▶ Second Tuesday in Feb: Requesting Resolution to KC Elections 46 days prior
- ▶ Fourth Tuesday in Apr: Requesting Resolution to KC Elections 46 days prior
- ▶ Third Tuesday in May: None in 2015 - if held 46 days prior to Election date
- ▶ Primary Election Day as specified in RCW 29A.04.311 with Requesting Resolution due to KC Elections no later than Friday immediately before the first day of candidate filing
- ▶ General Election Day - first Tuesday after the First Monday in Nov: Requesting Resolution to KC Elections no later than the day of the Primary Election

Role of the King County Elections Dept in regards to the I & R Petitions

- ▶ Determine whether or not the number of valid signatures on the petition are sufficient.
 - ▶ Petition initially filed with the jurisdiction
 - ▶ Petition Forwarded to King County Elections for verification
 - ▶ King County verifies signatures
 - ▶ KC determines sufficiency of the petition with a letter or certification of results

How may Powers of I & R be abandoned by a code city?

- ▶ Powers of I & R may be repealed 6 years after they were adopted
 - ▶ Step 1. Two Ways....
 - ▶ One Way: City Council passes a resolution of intention, proposing the abandonment of the powers of I & R.
 - ▶ Second Way: Petition by the citizens to abandon the powers of I & R with at least 10% of the votes cast in the last general election.
 - ▶ Step 2. After successfully completing one of the two ways of step 1., an election must be held at the next general election
 - ▶ Step 3. If a majority of the general election voters vote to repeal the powers of I & R, then they are repealed.

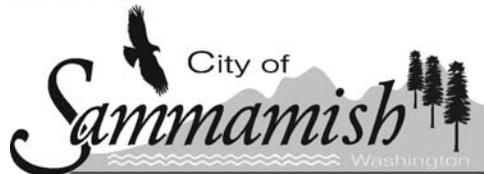
- ▶ **NO CODE CITY HAS EVER ABANDONED THE POWERS OF I & R ONCE ADOPTED**

Options

- ▶ Adopt the Powers of Initiative and Referendum
- ▶ Adopt a Resolution referring the adoption for the Powers of Initiative and Referendum to the voters
- ▶ Do Nothing and wait for a petition to enact the Powers of Initiative and Referendum.

Questions & Discussion





Memorandum

DATE: January 22, 2015

TO: City Council
City Manager

FROM: Mike Kenyon, City Attorney and Kim Adams Pratt, Assistant City Attorney

RE: Follow up - Initiatives and Referenda

During the December 9, 2014, City Council Study Session questions were asked by Councilmembers regarding the topic of initiatives and referenda that required additional investigation and research. Below are the questions asked and the information obtained by City Staff and Kenyon Disend in response.

1. The City Council requested a copy of the list compiled by Municipal Research and Service Center (MRSC) of the statutory topics not subject to initiative and referendum.

Attached is **Appendix H** from MRSC's Initiative and Referendum Guide, which is the list of topics that are not likely subject to initiative and referendum powers. Attached as **Appendix I** is the list of topics that is likely subject to initiative and referendum powers.

2. Provide a comparison of the subjects that are prohibited to be addressed by initiative as compared to the subjects that are prohibited to be addressed by referendum.

In addition to the subjects in Appendix H, neither initiative nor referendum powers may be used when the statutory authority is explicitly granted to the City Council (rather than the City as an entity) and when the ordinance is administrative (merely pursues a plan already adopted) rather than legislative (permanent, general character).

The following is a comparison of topics for which referendums are specifically prohibited and a reference as to whether initiative petitions are also prohibited:

- Referendum prohibited for emergency ordinances necessary for the immediate preservation of public peace, health, safety or for the support of city government and its public institutions. Whether an initiative petition was prohibited would depend on the specific topic of the emergency ordinance.
- Referendum prohibited for ordinances providing for local improvement districts. An initiative petition is also likely prohibited on this topic. Appendix H, RCW 35.43.042, 35.43.010.

Exhibit 2

- Referendum prohibited for ordinances providing for or approving collective bargaining. Recent trial court cases have held that an initiative on this topic is prohibited because the power is granted specifically to the City Council, not to the City in general.
- Referendum prohibited for ordinances providing for the compensation of or working conditions of city employees. Whether an initiative was to be allowed likely depends on whether the authority is specifically given to the City Council and whether the topic of the initiative is legislative rather than administrative.
- Referendum prohibited for ordinances authorizing or repealing the levy of taxes. Initiatives are prohibited for several funding and taxing mechanisms. See Attachment H.
- Referendum prohibited for ordinances appropriating money. Initiatives are prohibited for several funding and taxing mechanisms. See Attachment H.

3. Provide examples, from cities near Sammamish that have adopted initiative and referendum powers, of the types of regulations that have been the subject of either an initiative or a referendum.

Redmond: A petition was filed (by Tim Eyman) against red-light cameras. The City Clerk determined that red-light cameras fall under the jurisdiction of police regulations, which sits solely with the City Council. The City Council agreed and the petition was rejected. The petitioner appealed this decision to superior court and the court agreed with the City of Redmond. Redmond adopted these powers in 1982 and this is the first petition it has received.

Issaquah: An unsuccessful initiative petition was received in 2012 regarding the ban on plastic bags. However, efforts continued into 2013 until a valid petition was received. The City Council directed the initiative for a vote of the people. Ultimately, at the special election in February of 2014 the item was not successful with voters and Issaquah retained the plastic bag ban. The City Clerk recalls that this is the only petition Issaquah has received in at least twenty (20) years. Issaquah City staff explained that this was a very labor intensive process – for both the petitioner and the City; however, it is not something that is done frequently.

Lynnwood: On December 10, 2014 a group submitted 336 pages of petitions totaling approximately 4740 signatures for an initiative to appeal an ordinance banning fireworks. The number of signatures required to validate the petition is 2,708. The County Elections Office certified and accepted 2,195 signatures, the balance (2,556) were stricken. On December 18th the City sent a Certificate of Insufficiency to the petitioning group and explained that they had 10 days to submit additional signatures. Additional signatures were submitted and have been submitted to the County Elections Office for validation. The City Clerk believes this is the only petition filed with the city in the last fifteen (15) years.

North Bend: No petitions filed.

4. If a petition to adopt initiative and referendum powers is submitted to the City Clerk, who pays for the County Auditor/King County Elections Office to verify that the required 50% of signatures has been obtained?

Exhibit 2

The King County Elections Office has told us that it does not currently charge for verifying signatures.

5. Please provide the information the Council was provided with in 2012 regarding past abuses or unintended consequences of initiative and referendum powers.

City Attorney Bruce Disend provided Council with the 2002 *Direct Democracy: The Initiative and Referendum Process in Washington State* from the League of Women Voters. The full report is attached and below is an excerpt from the introduction.

This revised and updated study of the initiative and referendum process dates from the League research done in 1994 to a book published in 2002. Although a clear majority of Washington citizens support keeping the initiative process, there is a growing frustration over some aspects: the increasing use of the process, its encroachment into areas some previously thought to be the prerogative of the legislature, the use of paid signature gatherers, and the growing willingness of the Washington State Supreme Court to rule voter-passed initiatives unconstitutional. Some, who have always supported the initiative process, have come to wonder if it isn't time to make changes in the process. Others believe the fewer restrictions the better, and that nothing should interfere with the right of the people to exercise this constitutionally protected form of "direct democracy." Concerns range from the large number of initiative petitions circulated to the impact on the budget process, and for some voters, the recognition after-the-fact of the unintended consequences of undercutting services they actually want. Many legislators find it increasingly difficult to manage a budget that is impacted by the passage of ballot measures that can increase spending and reduce revenue in the same election . . . We hope this report helps readers draw their own conclusions as to which is which.

6. Is it possible for a City to adopt the power of initiative, but not to adopt the power of initiative?

No, RCW 35A.11.080 allows for a noncharter code city like Sammamish to "provide for the exercise in their city of the powers of initiative and referendum." The use of the conjunction "and" in the statute would most likely be interpreted to mean that the power of initiative and referendum must be adopted together, and that a city is not allowed to adopt one power without adopting the other.

7. If a petition to adopt the powers of initiative and referendum were presented to the City Council, what would the timeline be for King County Elections Office to verify the signatures on the petition? Passage of a resolution by Council? Vote by the electorate?

RCW 35A.02.020 provides that the county auditor "shall promptly proceed to determine the sufficiency of the petition." There is no specific timeframe for the City Council to then adopt a resolution declaring the intention of the City to adopt the powers of initiative and referendum,

Exhibit 2

but the City is required to publish the resolution not more than ten days after its passage. RCW 35A.20.020.

If in response to the Council's resolution a referendum petition is filed within 90 days after publication of the resolution (signed by 10% of votes cast in last general election) an election must be held at the next general election if there is one within 180 days of the filing of the petition. Otherwise, the vote will be held at a special election called for that purpose. RCW 35A.02.025. Special elections in 2015 are scheduled for February 10th, April 28th, and August 4th.

8. What was the cost to the City of defending the Clallam County Superior Court case, cause number 14-2-00771-2 that dealt with an initiative that would have required all union negotiations be done in public?

We contacted the cities of Sequim and Shelton regarding the fees that they have incurred as a result of the initiative on union negotiations. Neither city was able to provide a dollar figure for the attorney's fees incurred. In general, it is difficult to accurately predict the cost of potential future litigation involving initiative and referendum matters. In most cases, however, the litigation would be relatively straightforward and would be limited to pure legal issues, which would eliminate the need for depositions and other discovery (and their attendant expense). The City's litigation expense would probably fall between \$10,000 and \$20,000.

9. Has a City with the powers of initiative and referendum ever passed either an initiative or referendum? MRSC researched this issue for us, and found that in the past two years the following is the only initiative that went to a vote of the city's citizens:

2014 Issaquah Proposition 1. This initiative ordinance to the Council of the City of Issaquah, Washington deals with retail carryout bags. Currently, City law prohibits retail establishments from providing lightweight plastic carryout bags to customers, requires a minimum 5 cent charge for paper carryout bags, and encourages use of other reusable bags. The proposed initiative ordinance would repeal this law. In addition, the proposed initiative ordinance would require future regulations of retail carryout bags be approved by a majority vote of the City Council and a majority vote of the citizens at an election.

The initiative failed (47.68% to 52.32%).

10. Provide the terms of Article I, section 1 of the Washington State Constitution.

Article I, Declaration of Rights, Section 1 Political Power. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

11. If a state initiative or referendum is passed by the electorate, is the legislature authorized to amend or repeal the enactment after two years? Yes.

Washington State Constitution, Article II, section 1(c) No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: *Provided*, That any such act, law, or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two-thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon. (Emphasis added)

12. Provide the process by which the powers of initiative and referendum may be repealed six (6) years after being adopted.

The following is a summary of the procedure authorized in RCW 35A.11.080: is as follows:

- Two ways exist to initiate the repeal of initiative and referendum powers: The first is for the city council to pass a resolution of intention, proposing abandonment of initiative and referendum powers. The second is for the citizens to petition for abandonment of the powers. The petition must be signed by not less than 10 percent of the votes cast at the last general municipal election.
- Once the petition has been determined to be sufficient by the county auditor/King County elections office or the resolution of intention has been approved by the council, an election must be held at the next general election.
- If a majority of the voters voting at the election vote to repeal the powers of initiative and referendum, then they are repealed.

13. What form does an initiative or referendum take on the City's records after passed by the voters?

An initiative that is passed would become part of the City's official ordinance records. The City Clerk is to write on the margin of the ordinance "ordinance by petition No." or "ordinance by vote of the people." If a referendum is passed the ordinance that is the subject of the referendum would be shown in the City's records as having been repealed. Below is how the City of Bellevue has codified these requirements in its municipal code ("BMC").

BMC section 1.12.180 Initiative – Effective date – Record.

If a majority of the number of votes cast thereon favor the proposed ordinance, it shall become effective immediately and shall be made a part of the record of ordinances of the city.

BMC 1.12.200 Initiative – Repeal or amendment – Method.

The council may by means of an ordinance submit a proposition for the repeal or amendment of an ordinance, initiated by petition, by submitting it to a vote of the people at any general election and if a majority of the votes cast upon the proposition favor it, the ordinance shall be repealed or amended accordingly.

A proposition of repeal or amendment must be published before the election thereof as in an ordinance initiated by petition when submitted to election.

BMC 1.12.210 Initiative – Repeal or amendment – Record.

Upon the adoption of a proposition to repeal or amend an ordinance initiated by petition, the city clerk shall write upon the margin of the record of the ordinance “repealed (or amended) by ordinance No. _____,” or “repealed (or amended) by vote of the people.”

BMC 1.12.260 Referendum – Effective date – Record.

If a majority of the number of votes cast thereon oppose the ordinance subject to the referendum, such ordinance shall be deemed repealed immediately.

14. What are the City Council’s options if the City Council believes that an initiative that has passed needs to be amended or repealed?

The City Council cannot by its own vote amend or repeal an ordinance that has been adopted by initiative. RCW 35.17.340 provides that an ordinance adopted by a vote of the people cannot be amended or repealed except by a vote of the people. This limitation on repeal or amendment applies even if the City Council decides to pass the proposed ordinance without alteration pursuant to RCW 35.17.260(1), because the ordinance was "initiated by petition."

RCW 35.17.350 does allow the City Council to submit a proposition to amend or repeal an ordinance initiated by petition, by submitting same to a vote of the people at any general election. If a majority of the votes cast are in favor of the Council proposition, then the ordinance shall be amended or repealed accordingly.

Appendix H

Examples of Specific Statutory Grants of Power to Municipal Legislative Authority

These topics are not likely to be subject to initiative and referendum powers.

Statutory Grants	RCW
Consolidation/Annexation of One City to Another	Ch.35.10
Annexation of Unincorporated Areas to City	Ch.35.13
Assumption of Water-Sewer Districts	35.13A.020
Power to Acquire Auditoriums, Art Museums, Swimming Pools, etc.	35.21.020
Power to Create Special Funds: Payroll & Claims	35.21.085
Authority to Designate Streets as Parkways - Transfer of Maintenance Responsibilities	35.21.190
Power to Establish Residency Qualifications for Appointed Officials/Preference in Employment	35.21.200
Power to Purchase Liability and Workman's Compensation Insurance	35.21.209
Power to Establish Transportation Benefit Districts	35.21.225
Power to Participate in Economic Opportunity Act Programs	35.21.680
Authority to Promote Tourism	35.21.700
Authority to Establish Public Ambulance Utility	35.21.766
Authority to Establish B & O Tax on Ambulance Businesses	35.21.768
Authority to Revise Corporate Boundary - Street Center Lines	35.21.790
Authority to Create Park Board - Commissioners	35.23.170
Authority to Create Special Funds, Sell Revenue Bonds, Warrants & Set Rates - Municipal Bond Revenue Act	Ch.35.41
Authority to Order Local Improvements	35.43.040

Exhibit 2	
Authority to Create Utility Local Improvement Districts (ULID)	35.43.042
Authority to Issue LID Bonds	35.45.010
Authority to Create Pedestrian Malls	35.71.030
Authority to Contract for Street Projects	35.72.010
Authority to Create Comprehensive (6-year) Street Plan	35.77.010
Authority to Classify Streets	35.78.010
Authority to Vacate Streets	35.79.030
Authority to Regulate Unfit Dwellings, Buildings, Structures	35.80.030
Authority to Enable Local Housing Authority	35.82.030
Authority to Acquire, Construct, Maintain, etc., Out-of-State Property, Plant and Equipment for Municipal Utilities	35.92.014
Authority to Appropriate Funds, Levy Tax for Transportation System	35.95.030
Authority to Annex Property - Code Cities	35A.14.015
Authority to Establish a Planning Agency	35A.63.020
Authority to Approve Comprehensive Plan	35A.63.072 & 35.63.100
Authority to Adopt Land Use Regulations (Zoning Code)	35A.63.100 & 35.63.110
Authority to Establish Short Plat/Subdivision Regulations	58.17.060
Authority to Approve Plats	58.17.100 & 58.17.110 & 58.17.170

Appendix I

Examples of Specific Statutory Grants of Power to Municipal Corporate Entity (Voters)

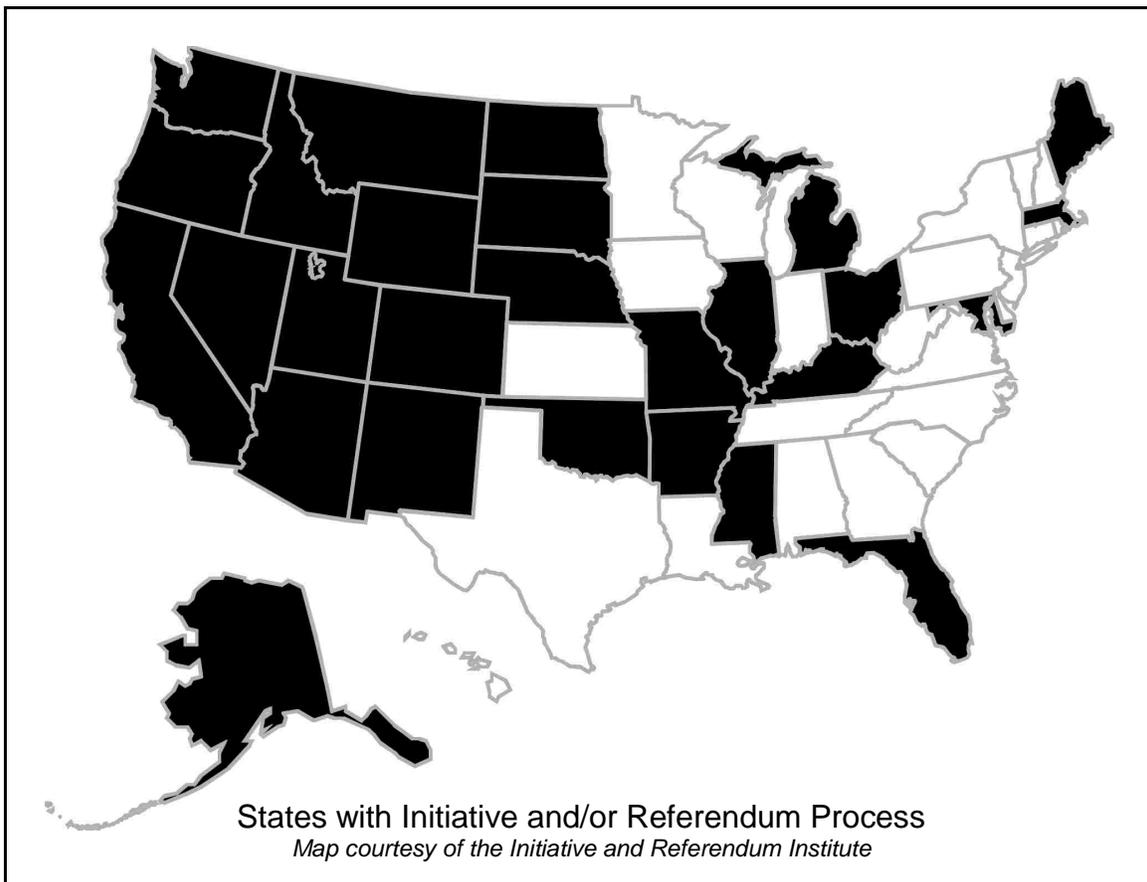
These topics may be subject to initiative and referendum powers if the other statutory and judicial limitations on the powers are satisfied.

Statutory Grants	RCW
Petition for Reduction of City Limits	35.16.010
Power to Provide Auxiliary Water System for Fire Protection	35.21.030
Power to Create Equipment Fund	35.21.088
Power to Establish, Construct and Maintain Dikes and Levees	35.21.090
Power to Accept Donations of Property	35.21.100
Authorization to Construct, Acquire and Maintain Ferries	35.21.110
Power to Establish Solid Waste Handling System	35.21.120
Power to Establish Sewers, Drainage and Water Supplies	35.21.210
Power to Regulate Sidewalks	35.21.220
Authority to Require Removal of Debris/Plants	35.21.310
Authority to Establish Lake Management Districts	35.21.403
Authority to Establish Youth Agencies	35.21.630
Authority to Assist Development of Low Income Housing	35.21.685
Authority to Own/Operate Professional Sports Franchise	35.21.695
Authority to Acquire/Construct Multi-Purpose Community Center	35.59.030
Authority to Participate in World Fairs and Expositions	35.60.030
Authority to Construct Sidewalks, Gutters, Curbs, etc.	35.68.010
Authority to Erect/Maintain Draw Bridges	35.74.010

Exhibit 2	
Authority to Regulate and License Bicycles	35.75.010
Authority to Provide Off-Street Parking Facilities	35.86.010
Authority to Acquire and Operate Municipal Utilities - Generally	35.92.010
Authority to Require Conversion to Underground Utilities	35.96.030
Authority to Establish Heating Systems	35.97.020
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DIRECT DEMOCRACY:

The Initiative and Referendum Process in Washington



By
The League of Women Voters of Washington
Education Fund

Initiative & Referendum Committee

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Tanya Baumgart
Cheryl Bleakney
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Editor:
Marilyn Knight

Typographer:
Jane Shafer

Reading Committee

Elizabeth Davis
Steve Lundin
Sue Mozer
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Alice Schroeder

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*League of Women Voters of Washington
4710 University Way NE, #214
Seattle, WA 98105-4428
206-622-8961*

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Marty Brown, Director, State of Washington Office of Financial Management and Jim Hendrick, Legislative Director, OFM

Dr. Todd Donovan, Professor of Political Science, Western Washington University

Mike James and Lucy Copass representing "The Citizen Jury" (an initiative review)

Brian Malarky, Executive Director of the Executive Ethics Board

Shawn Newman, Olympia attorney and WA State Director of the Initiative and Referendum Institute

Michael O'Connell, counsel to the Legislative Ethics Board

Sam Reed, Secretary of State of Washington

Rep. Sandra Romero, Chair, State Government Committee, House of Representatives

Kurt Young, Finance Officer, Public Disclosure Commission

Public Meetings Attended:

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Education Fund, LWV Washington: "Government by Initiative," November 8, 2001

Seattle University Law Review: Symposium on Law and Public Policy: "The Initiative Process in Washington," September 14, 2001

DIRECT DEMOCRACY

The Initiative and Referendum Process in Washington State

Introduction

Although a clear majority of Washington citizens support keeping the initiative process, there is growing frustration over several aspects: the increasing use of the process, its encroachment into areas previously thought by some to be the prerogative of the legislature, the use of paid signature gatherers, and the growing number of voter-passed initiatives that the Washington State Supreme Court has ruled unconstitutional. Many who have always supported the people's right to initiate legislation have begun to wonder if it isn't time to make changes in the process. Others believe the fewer restrictions the better, and that nothing should interfere with the right of the people to exercise this constitutionally protected form of "direct democracy."

Other concerns include the impact on the budget process, and for some voters, the recognition after-the-fact of the unintended consequences

of undercutting services they actually want. Legislators are finding it increasingly difficult to manage a budget that is impacted not only by a down turn in the economy, but also by the passage of ballot measures that increase spending and reduce revenue in the same election.

What follows is a revised and updated look at what has happened since the League's 1994 study. Although many of the ideas for change voiced then are included, a few new ones have emerged. Law Professor Kris Kobach notes some suggestions are "sincere efforts to improve the legitimacy of the process, while others have been thinly-disguised attempts to hobble it."¹ We hope this report helps readers draw their own conclusions as to which is which. You will find references to recent court decisions, comparisons to other states that have the initiative process, and updated charts. A bibliography and other references are also provided.

The Initiative and Referendum in the United States

The initiative and referendum (I&R) process is called "direct democracy" by political scientists. Direct democracy is an old concept, practiced in ancient Greece and in the town meetings of colonial New England. It differs from the current definition in that everyone knew each other and usually could see how they voted. Our founding fathers concluded that direct democracy was impractical in a country containing 13 states with 13 different sets of attitudes and interests, and chose to establish a representative form of government ("indirect democracy") with a system of checks and balances. The U.S. Constitution makes no provision for initiatives or referenda at the federal level.

Author David Magleby² sees direct democracy (the initiative process) as valuing participation, open access and political equality, while tending to

de-emphasize compromise, continuity and consensus. It encourages conflict and competition and attempts to expand the base of participants. On the other hand, indirect democracy (the legislative process), he says, values stability, consensus and compromise, and seeks to insulate fundamental principles from momentary passions and fluctuations of opinion.

While the Tenth Amendment to the Constitution leaves to the states all legislative powers not granted to Congress, it also guarantees to every state a republican (representative) form of government.³ It is based on this "guarantee clause" that some legal scholars have argued that the use of initiatives and referenda is unconstitutional. The United States Supreme Court, however, has held in a case challenging their use that the issue is a

- Table 1 -
States with Direct (DA)^a and In-direct (IDA)^b Initiative Amendments; Direct (DS)^c and In-direct (IDS)^d Initiative Statutes and Popular (PR)^e Referendum^f

States where some form of Initiative or Popular Referendum is available	Date Process was adopted	Type of process available		Type of Initiative process available		Type of Initiative process used to propose Constitutional Amendments		Type of Initiative process used to propose States (Laws)	
		<i>Initiative</i>	<i>Popular Referendum</i>	<i>Constitutional Amendment</i>	<i>Statute</i>	<i>Direct (DA)</i>	<i>In-direct (IDA)</i>	<i>Direct (DS)</i>	<i>In-direct (IDS)</i>
Alaska	1956	X	X	O	X	O	O	X	O
Arizona	1911	X	X	X	X	X	O	X	O
Arkansas	1910	X	X	X	X	X	O	X	O
California ^g	1911/66	X	X	X	X	X	O	X	O
Colorado	1912	X	X	X	X	X	O	X	O
Florida	1972	X	O	X	O	X	O	O	O
Idaho	1912	X	X	O	X	O	O	X	O
Illinois ^h	1970	X	O	X	O	X	O	O	O
Kentucky	1910	O	X	O	O	O	O	O	O
Maine	1908	X	X	O	X	O	O	O	X
Maryland	1915	O	X	O	O	O	O	O	O
Massachusetts	1918	X	X	X	X	O	X	O	X
Michigan	1908	X	X	X	X	X	O	O	X
Mississippi	1914/92	X	O	X	O	O	X	O	O
Missouri	1908	X	X	X	X	X	O	X	O
Montana ⁱ	1904/72	X	X	X	X	X	O	X	O
Nebraska	1912	X	X	X	X	X	O	X	O
Nevada	1905	X	X	X	X	X	O	O	X
New Mexico	1911	O	X	O	O	O	O	O	O
North Dakota ^j	1914	X	X	X	X	X	O	X	O
Ohio	1912	X	X	X	X	X	O	O	X
Oklahoma	1907	X	X	X	X	X	O	X	O
Oregon	1902	X	X	X	X	X	O	X	O
South Dakota ^k	1898/72/88	X	X	X	X	X	O	X	O
Utah	1900/17	X	X	O	X	O	O	X	X
Washington	1912	X	X	O	X	O	O	X	X
Wyoming	1968	X	X	O	X	O	O	X	O
Totals	27 states	24 states	24 states	18 states	21 states	16 states	2 states	16 states	7 states

Legend

O = process not currently allowed by the state constitution
 X = process currently allowed by the state constitution

Footnotes for Table 1

- a. Direct Initiative amendment (DA) is when constitutional amendments proposed by the people are directly placed on the ballot and then submitted to the people for their approval or rejection.
- b. In-direct Initiative amendment (IDA) is when constitutional amendments proposed by the people must first be submitted to the state legislature during a regular session.
- c. Direct Initiative statute (DS) is when statutes (laws) proposed by the people are directly placed on the ballot and then submitted to the people for their approval or rejection.
- d. In-direct Initiative statute (IDS) is when statutes (laws) proposed by the people must first be submitted to the state legislature during a regular session.
- e. Popular Referendum (PR) is the power to refer to the ballot, through a petition, specific legislation that was enacted by the legislature for their approval or rejection.
- f. This list does not include the states with Legislative Referendum (LR). Legislative Referendum is when a state legislature places an amendment or statute on the ballot for voter approval or rejection. Every state but Delaware requires state constitutional amendments to be placed on the ballot for voter approval or rejection.
- g. In 1996 California repealed indirect Initiative for statutes.
- h. In Illinois, the subject matter of proposed constitutional amendment is severely limited to legislative matters. Consequently, Initiatives seldom appear on the ballot.
- i. In 1972 Montana adopted a provision that allows for directly initiated constitutional amendments.
- j. In North Dakota prior to 1918, constitutional amendments could be initiated only indirectly.
- k. In 1972 South Dakota adopted a provision that allows for directly initiated constitutional amendments. In 1988 South Dakota repealed In-direct Initiative for States.

Exhibit 2

political question, not properly before the Court, and must be left to Congress.⁴

Conceived as an innovation in modern government allowing citizens to act when their elected representatives lose sight of the “public will,” Switzerland adopted the initiative and referendum system in 1874. It was 1898 before any states in the U.S. adopted the concept.

Near the turn of the century, populist, progressive and reform groups were agitating for more citizen control over their government. The populist I&R movement grew out of a general distrust of government. Many western voters believed that their legislators were only representing railroad, bank and timber interests. This led to many states forming chapters of The Direct Legislation League.

Through the years both the Populist and Progressive movements supported the initiative process, but from different perspectives. The early Progressives were middle class, more interested in reforming the system, while the Populist movement was a labor and farmer movement against powerful interests, and was much more radical. I&R was of common interest to both groups. Modern commentators make this distinction, as expressed by Dr. Kenneth Miller: “[N]eo-Progressives still seek to use the initiative to enhance the responsiveness, professionalism, and expertise of government, whereas neo-Populists seek to substitute the wisdom of the people for deliberations of elected officials.”⁵ In other words, Populists distrust government; Progressives seek to improve government.

The move toward direct citizen legislation started at the end of the nineteenth century. South Dakota led the “revolution” in 1898, with Oregon following in 1901. In Washington, after 10 years of lobbying and campaigning, a farm/labor coalition led by the Washington State Grange finally succeeded in getting the proposed I&R constitutional amendment on the ballot and passed in 1912. Montana included I&R in its constitution – the first and only state until Alaska, in 1959, to include the process in its original constitution.

Today, 27 states have either an initiative or referendum process, or both. Twenty-three states

have referendum measures, 17 states have initiatives to the people, and seven states permit initiatives to the legislature. Kentucky, Maryland and New Mexico allow referenda but not initiatives. Illinois and Mississippi allow initiatives but not referenda. Requirements differ from state to state. Twelve states, including Washington, limit initiatives to a single subject only, and nine states limit them to legislative matters only, as does Washington. Some states have fewer, and some, many more subject restrictions. Idaho has none at all while Alaska permits no revenue measures, no appropriations, no acts affecting the judiciary, or any local or special legislation and no laws affecting peace, health or safety. Eighteen states allow their constitutions to be amended by initiative. Nine states, including Washington, do not. Florida allows initiatives only for constitutional amendments.

Women’s suffrage was part of the Progressive and Populist movements. Initiatives in Oregon and Arizona gave women the right to vote. Interestingly, several attempts failed because liquor and saloon interests feared that women would vote for prohibition, which they did. The adoption and then the repeal of prohibition were initiative concerns in many states for years.

Washington is one of five states relying most heavily on the initiative process. California, Oregon and Colorado are the highest users; Arizona is the fifth. Between 1990 and 2000 there were 458 initiatives nationwide – more than three times the rate from the ‘40s through the ‘60s. In the 2000 election cycle, 90% of the initiative petitions failed to receive the required signatures; 350 were submitted in the 24 states; 76 made it onto the ballot and, of those, 36 were adopted, some of which were then challenged in court.

Oregon holds the record for the most initiatives on the ballot, some of which were groundbreaking. Oregon was the first state to adopt by initiative the popular election of U.S. Senators (1908), and to provide for a presidential primary (1910). In the election of 2000, it had 26 issues on the ballot. Also, many cities had local initiatives. One might

Exhibit 2

surmise that with so many issues on the ballot, voter turnout would be low. In this election, however, 81% of those eligible to vote were registered and 79% voted. How could this happen with so many issues on the ballot? In part, this may be explained by Oregon's use of the "vote by mail" (VBM) system. Created by the initiative process, spearheaded by the League of Women Voters of Oregon, AAUW and AARP and using 11,000 unpaid signature gatherers, it passed by more than a two to one margin in 1998, an "off year" election, with voter turnout similar to a Primary election.

In the 2002 election Washington voters will have two initiatives and two referenda, one referred by the legislature, on the ballot. Oregon voters will have seven initiatives and five legislative referrals

(referenda). The reduction in initiatives on Oregon's ballot matches a decrease nationally, according to M. Dane Waters, president of the Initiative and Referendum Institute in Washington, D.C. Nationally there were 55 statewide initiatives in 1998 and more than 65 in 2000, but Waters predicts as few as 40 in 2002. He believes we'll see the fewest number of initiatives on the ballot in 15 years, with Oregon having the sharpest drop-off.

In Washington State in the 1990's, 29 initiatives to the people were certified to the ballot, and 15 were approved. Only 15 made it to the ballot in the decade of the 1930's, but 11 were approved, which represents a higher percentage. It remains to be seen whether the few proposals on the 2002 ballot represents a trend, or merely a blip.

Creating Initiatives and Referenda in Washington

Initiatives –

Article II, Section 1 of the Washington State Constitution grants the right of initiative and referendum. Any registered voter in Washington, acting individually or on behalf of an organization, may file an initiative with the Secretary of State. There is a five-dollar filing fee for each initiative filed. In practice, the Secretary of State's office often assists the petitioner with the language and organization of the document.

Washington State's Public Disclosure law, adopted by initiative in 1972, stipulates that any individual or organization, which expects to receive funds or make expenditures in an effort to support or oppose an initiative, must register with the Public Disclosure Commission and file certain financial reports. The sponsor of an initiative should contact the Public Disclosure Commission in conjunction with the preliminary filing of the measure.

A copy of the text of every proposed initiative is then sent to the Legislative Code Reviser who reviews the draft for technical errors and style. He advises the sponsor of any potential conflicts be-

tween the proposal and existing statutes and puts the petition into legal language. The proposal is then returned to the sponsor with a "certificate of review" and any recommended changes. All changes recommended by the Code Reviser are advisory only and subject to approval by the sponsor. The sponsor has 15 working days after submission to the Code Reviser to file the final draft with the Secretary of State.

The final draft is then sent to the Attorney General. Legislation passed in 2000 requires the measure be given a ballot title of no more than ten words, a concise description of the measure, not to exceed 30 words and a summary not to exceed 75 words. The title question inquiring whether the measure should be approved or rejected must clearly define the intent of the initiative sponsor(s). Any person may challenge the ballot title or summary in Thurston County Superior Court within five days, and the court has another five days to announce its decision. Fewer than 25 percent of initiatives filed at the beginning of the process are ever printed or circulated by the sponsors. The sponsors pay the full cost of printing and circulating petitions.

Exhibit 2

Initiatives to the people must be presented to the Secretary of State not more than ten months prior to the next general election, and the signed petitions must be filed with the Secretary of State's office at least four months before the date of the election. To qualify for the ballot, the number of valid signatures must equal a minimum of eight percent of the votes cast for Governor in the last election. Approval by a simple majority of voters is required for passage unless it concerns gambling or lottery measures, which require 60 percent approval.

Initiatives to the legislature must be presented within ten months of the next regular session of the legislature, and the signed petitions must be turned in to the Secretary of State at least ten days before that session. If the signatures equal eight percent of the votes cast for Governor in the last election, the legislature must take one of the following actions.

- Adopt the initiative as proposed, in which case it becomes law without a vote of the people
- Reject or refuse to act on it, in which case the initiative must be placed on the ballot at the next general election.
- Approve an amended version, in which case both the new version and the original initiative must be placed on the next general election ballot.

Information about initiatives to be voted on is included in the state voters' pamphlet, along with arguments from the sponsoring committee and opponents. Once approved by the voters, initiatives cannot be changed by the legislature in the first two years, except by a two-thirds majority in both houses.

Referenda –

There are two types of referenda: the referendum bill and the referendum measure. The primary purpose of each is to give voters an opportunity to approve or reject laws either proposed or enacted by the Legislature.

Referendum bills are laws passed by the legislature which it chooses to refer to the electorate for approval or rejection. This process bypasses the Governor, denying him/her the opportunity to sign

or veto the bill. Most often these bills ask voter approval for new projects which will cost more money than the state has budgeted. Sometimes the bills represent "hot" issues such as a state position on transportation funding, nuclear waste repositories, expansion of public disclosure requirements, or changes in state abortion laws. Referendum bills have had a high success rate, with 38 of the 47 submitted to voters having passed.

Referendum measures are laws recently passed by the legislature that are placed on the ballot because of voter petition. The purpose of such a referendum is to stop a recently passed state law from going into effect. All or part of a law may be subjected to a referendum. Of the 49, which have been filed, 28 have succeeded in nullifying legislation.

Referendum measures differ from initiatives in the following ways:

- A referendum may be filed after the Governor has signed the act that the sponsor wants referred to the ballot. Signed petitions must be filed no later than 90 days after the final adjournment of the legislative session at which the act was passed. Once certified, the referendum is submitted at the next state general election.
- Petitions may be certified with a minimum of four percent of the votes cast for Governor in the last election.
- Emergency Clause – The power of referendum is given and partially taken away in the same sentence of Article II of the State Constitution:

"The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law or any part thereof passed by the legislature, *except such laws as may be necessary for the immediate preservation of the public peace, health or safety; (or) support of the state government and its existing institutions...*" (italics ours, the (or) above has been assumed by courts to have been inadvertently omitted by the framers.)

The italicized part in the above bullet is commonly known as the emergency clause. This clause

Exhibit 2

is included in state legislation where there is a genuine emergency, or when the legislature wants the legislation to take effect at the start of the new fiscal year, July 1. An emergency clause provides a date certain for legislation to take effect. It is the only constitutional authority to deviate from the mandate of the seventh amendment, which provides that “no act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted.” For many years no one knew when the Legislature would finally adjourn. With the passage of a constitutional amendment in 1979, special sessions, as well as regular sessions, now have a time certain for adjournment.

There is a growing belief that the emergency clause is often included in a bill to discourage a voter-initiated referendum. As early as 1945, the State Supreme Court chided the legislature for what it perceived was an attempt to thwart the people’s right of referendum.

“With all due respect, and with the earnest desire not to seem either censorious or facetious, we feel that we must say frankly and in all seriousness that the custom of attaching emergency clauses to all sorts of bills, many of which cannot by any stretch of the imagination be regarded as actually emergent...has become so general as to make it appear, in the light of recent experience, that a number of (formerly established presumptions indulged in favor of

legislative declarations of emergencies) can no longer be deemed controlling. It, of course, will never be presumed that the legislature deliberately intended to infringe upon a constitutional right.”⁶

In the past, courts have ruled that the presence of the emergency clause would not protect legislation from referendum, but in recent years increasing weight is being given to its existence. The emergency clause has been credited by some for the passage of only one citizen-initiated referendum since 1977. Some believe 90 days leaves too little time to collect signatures, even though only half as many are required as for an initiative; however, some feel a change in court attitude may have made the biggest difference.

When the Washington Supreme Court cited the emergency clause to disallow a referendum nullifying the bill to fund the Mariner’s baseball stadium, attorney Shawn Newman, co-founder of CLEAN,⁷ reacted this way:

“In memory of the citizen referendum. On December 20, 1996, the citizen’s referendum power, age 84, suffered an untimely death with the State Supreme Court’s decision in CLEAN et al v. State (the Mariners stadium case). The majority of the court, citing such learned authorities as Vincent “New York Vinnie” Richichi, a Seattle sports radio talk show host, on the ‘value of M’s’ was not only in the public interest

– Table 2 –
Summary of Initiatives and Referenda: 1914-2001

	Number Filed	Number Certified	Number Approved	Number Rejected
Initiatives to the People	775	116	57	59
Initiatives to the Legislature	260	27	17 ^B	10
Referendum Measures (Referred by petition of voters)	49	32	4	28 ^C
Referendum Bills (Referred by the Legislature)	49	47 ^D	38	9

Note B – In five cases, the initiative was approved by the Legislature without being referred to the ballot. In two other cases, an alternative to the initiative was approved by voters.

Note C – In this instance, rejected means a majority of votes were cast in opposition to the measure referred and the sponsors of the referendum were able to prevent newly-enacted legislation from going into effect.

Note D – In two instances, referendum bills did not appear on the ballot.

Exhibit 2

(despite the fact the people of King County voted against it) but that it was also a constitutional ‘emergency’ (necessary for the ‘public peace, health or safety’) thereby avoiding the people’s right to Referendum. The citizen referendum process is essentially a check and balance on the legislature ... The majority opinion means the death of citizen initiated referenda. Memorial services to be announced.”⁷

Fiscal Impact Statement –

Recent legislation, applying to both initiatives and referenda, requires the Office of Financial Management (OFM) to prepare a fiscal impact statement for each of the following state ballot measures:

- an initiative to the people that is certified to the ballot;
- an initiative to the legislature that will appear on the ballot because the legislature did not pass it;
- a measure appearing on the ballot that the legislature proposes as an alternative to an initiative to the legislature;
- a referendum bill referred to voters by the legislature; and
- a referendum measure certified to the ballot by petition.

A fiscal impact statement must describe any projected increase or decrease in revenues, costs,

expenditures, or indebtedness that the state or local governments will experience if the ballot measure is approved. Where appropriate, the statement may include both estimated dollar amounts and a description placing those amounts in context. The statement must include a summary of not more than 100 words, and a more detailed statement that includes the assumptions that were made to develop the fiscal impacts. These statements must be available online and included in the state voters’ pamphlet.

Requirements for passage are the same for both the initiative and referendum – a simple majority.

The Local Level –

Cities and counties in Washington do not automatically have initiative or referendum powers. It takes action on the part of each jurisdiction to grant its citizens these powers. The kind of action depends on the size and class of the city as well as the city or county’s form of government. The state authorizes cities and counties to have the initiative by legislation that allows them to adopt their own charter, sometimes referred to as home rule.

Five of Washington’s 39 counties have home rule charters, as do ten cities, but that does not necessarily mean that they have chosen to adopt I&R or extend the process to charter changes. For example, the city of Seattle has included the right to amend its charter by initiative, but King County has not. Limited purpose governments, such as school districts, do not have the power of initiative or referendum at all.

The Role of Money

One element of concern raised by many is the role money may play in an election. The arguments, proposed remedies and constitutional issues surrounding campaign finance are similar for candidates and ballot issues. Many studies have been done in other states attempting to find a statistical relationship between the money spent on a ballot issue and the percentage of votes gained in victory or defeat. Conflicting conclusions have been reached. In Washington, of the 37 initiated meas-

ures enacted since 1975, seven were passed even though advocates were outspent by opponents.

In his book, Democracy Derailed: Initiative Campaigns and the Power of Money, syndicated columnist David S. Broder writes:

“Money does not always prevail in initiative fights, but it is almost always a major – even dominant factor. Like so much else in American politics, the costs of these ballot battles

Exhibit 2

have escalated enormously in the past decade. To a large extent, it is only those individuals and interest groups with access to big dollars who can play in the arena the Populists and Progressives created in order to balance the scales against the big-bucks operators.” He goes on to say, “ ... millionaires have ... found the initiative handy for ‘empowering’ voters to endorse the initiatives’ sponsors’ agendas.”⁸

Perhaps the most striking example of “empowerment” occurred in Washington State in 1997. The owner of the Seattle Seahawks football team wanted a new football stadium for his team, and he wanted the taxpayers to pay some of the estimated \$425 million cost. The Legislature approved a bill to that effect and referred it to the people as a referendum bill. The owner provided the \$3,998,284 cost of running the special election, and spent a good deal of money campaigning for the measure. It passed with 51% of the votes, in June of 1997.

The California Commission on Campaign Financing, a high profile, private, non-profit, bipartisan organization produced a two-year study of the initiative process in the early nineties called, Democracy by Initiative-Shaping California’s Fourth Branch of Government. The study commented that a very large campaign fund for opposing an initiative seemed to be more effective than a

large fund supporting a measure. In other words, there is some evidence that it may be possible to “buy” a “No” vote, but little evidence that it may be possible to “buy” a “Yes” vote. The rationale is that a very large war chest may be used either to circulate a competing initiative or to conduct a last minute negative advertising blitz, either of which could be designed to confuse the voter. The more unbalanced the campaign spending between the two sides, the easier it was to draw statistical relationships. However, the report was careful to point out that a multitude of other factors can intervene and create exceptions to these generalities.

Since 1990, states have increasingly regulated and restricted the use of the initiative process. According to M. Dane Waters, these regulations and restrictions have made the process so costly and difficult that citizens have been forced to seek money and support from national groups and to purchase the help of the “initiative industry.”⁹

No state restricts the flow of dollars into ballot measure campaigns. Several have tried to limit contributions or impose spending ceilings, but in each case the courts have declared such laws unconstitutional. The U.S. Supreme Court ruled that the expenditure of money was tantamount to “speech” and, therefore, restrictions on campaign expenditures violate the First Amendment to the Constitution.¹⁰

Signature Gathering

The number of signatures needed to qualify an initiative varies from three and a half to 15 percent of the votes cast for Governor in the last election – Washington’s is eight percent. One state requires ten percent of the registered voters and another, four percent of the population.

Ten states, including Washington, place no geographical requirements on signature gathering; eleven states do. Requirements vary widely, from Nebraska’s requirement of five percent of the voters in 38 of 93 counties, to 10 percent in 20 of 29 counties in Vermont. Wyoming’s strenuous petition requirement of 15 percent of the votes cast in

the last governor’s election, from two-thirds of the counties, effectively keeps the process from being used very often. Alaska requires at least one signature in two-thirds of the election districts.

Paying for collecting signatures has become more common in recent years. While the use of unpaid signature gatherers is still possible, qualifying for the ballot is not as likely. Extensive organization and paid staff usually are required to be successful. Often a campaign that began as a volunteer effort has had to add paid petitioners as the deadline approached. Between 1992 and 2000, 30 Washington initiatives were on the ballot. Only six

Exhibit 2

reached the ballot without paid signature gatherers. The six issues were an anti-tax measure, a ban on late-term abortions, a raise in the minimum wage, a roll-back of the motor vehicle excise tax and voter approval for any tax or fee increase, a ban on bear or cougar hunting with dogs or bait, and a ban on certain animal traps.

In Washington in 2002, the rate for collecting signatures ranged from 60 cents to two dollars per signature, depending on how much time was available before the deadline. In some states, the rate has been known to go as high as four dollars per signature.

Qualifying a ballot measure in California cost \$69,000 in 1976. That figure grew as high as two million dollars in the '90s. However, spending a lot of money to qualify a ballot issue does not necessarily guarantee its success on election day. "Voters are smarter than you think," said Dr. Todd Donovan, a Western Washington University political science professor, speaking at a meeting of the League of Women Voters in Bellingham. "If they see special interests supporting an issue, they will vote against it. Also, too many initiatives on a ballot turns people off, and they tend to vote against everything or not vote at all."

Legal Efforts to Restrict Usage –

Efforts have been made in this state and others to place restrictions on signature gatherers. Many of these efforts have been found to violate the United States Constitution. When a state gives its citizens the right to the initiative process, the United States Supreme Court regards this right as falling under the protections of the first amendment. It is "core political speech," and any restrictions are subject to strict scrutiny by the Court. *Meyer v. Grant*.¹¹ In *Meyer*, the Court held Colorado's prohibition against payment to signature gatherers to be unconstitutional. The Court observed that a state's interest in preventing fraud could be accomplished in other less restrictive ways.

In 1993, a law passed by the Washington Legislature made it a gross misdemeanor to pay signature gatherers by the signature, but did permit payment by the hour. Relying on the *Meyer* case, this statute was challenged in Federal District Court.¹²

The Court concluded on the evidence presented that the law was not necessary to prevent fraud – there was no significant difference between the validity of signature campaigns which used paid gatherers and those that relied on volunteers.

A more recent attempt by the Colorado Legislature to place restrictions on signature gatherers also ran afoul of first amendment protections.¹³ The U.S. Supreme Court held that a state cannot require 1) that a signature gatherer be a registered voter, 2) that a signature gatherer wear an identification badge while soliciting signatures, and 3) that proponents of an initiative report the names and addresses of the signature gatherers and the money paid to each. Despite the state's argument that these restrictions were necessary to prevent fraud, the Court held that they were "undue hindrances to political conversations and the exchange of ideas."

A recent case out of North Dakota upheld state restrictions, but this case was not reviewed by the U.S. Supreme Court.¹⁴ The Court of Appeals held that the requirement that 1) signature gatherers be residents of the state and 2) that they not be paid by the signature did not violate the constitution. The court based its decision on clear evidence that fraud had occurred, and the requirements were necessary to prevent future fraud and to give the state subpoena powers over signature gatherers. Further, the requirements were narrowly drawn to accomplish the state's goals. The Eighth Circuit distinguished the North Dakota case from the Washington case based on the latter's lack of evidence of fraud.

It is always risky to predict how a future court will respond to specific limitations on the initiative process. Past opinions have emphasized the significance of unfettered political speech to the democratic process. Any interference with the free exchange of ideas between signature gatherers and potential signers would be viewed with suspicion. However, based on the cases to date, some believe it might be possible to place some restrictions.

The Supreme Court has not ruled on the specific issue of payment per signature, or on a residency requirement. Some people believe that a provision for a geographical distribution might survive a constitutional challenge. The geographical

Exhibit 2

distribution, of course, would have to comply with the one-person-one-vote mandate of earlier decisions.¹⁵ The use of counties for example, would not comply because Washington's counties vary dramatically in size and population.

Where Signatures May Be Gathered –

A major factor in initiative and referendum campaigns is determining where signatures can be collected legally. In a series of cases, the Washington Supreme Court has affirmed the right to collect signatures on private commercial property which has the earmarks of a town center, community business block or other public forum, subject to reasonable time, place and manner restrictions.¹⁶ The court uses a balancing test to determine the right of a property owner to exclude signature gatherers against the right to collect signatures as provided in the state constitution. This test relies on such factors as the nature and use of the property, the scope of the invitation that the owner has made to the public, and the impact that denial will have on the initiative process. Under this test, shopping malls are generally accessible for signature gather-

ers, but grocery stores are not.

Some petition gatherers complain that shopping mall requirements of a long lead-time to sign up for space, and million dollar bonds are not reasonable restrictions. One example cited was a rule used by the Bellevue Square Mall: Petitioners are assigned a "box" outlined by red tape on the floor. They must stay within these boundaries and are not allowed to attract potential signers with a greeting such as inquiring if passers-by were registered voters. That would be deemed "hawking," which is not allowed.

One of the reasons for the drop in the number of initiatives on the 2002 ballots may be the increasing number of prohibitions at sites popular for circulators to meet potential signers. In recent years tighter restrictions have also been placed on "public spaces." A recent regulation by the U.S. Postal Service prohibiting signature gathering on Postal Service property has been challenged by the Initiative & Referendum Institute and is scheduled to be tried before the U.S. District Court in October 2002.¹⁷

Constitutional Issues after Passage

Laws passed by initiative or referendum must comply with the federal and state constitutions, as must laws passed by the legislature. The chart on page 11 lists initiatives invalidated by state and federal courts after passage by the voters. The recent application of the single subject rule has generated considerable criticism. Some voters don't understand the court's right and responsibility to rule on constitutional issues regarding voter-passed measures; others believe the single subject rule is misapplied, or applied unevenly.

The single subject rule –

The Washington Constitution provides in Art. II, sec.19 that "no bill shall embrace more than one subject and that shall be expressed in the title." Up until recently, the single subject rule challenge to initiatives has been rare in Washington and other states, but its use has been growing. In 1995, the Washington Supreme Court concluded that the sin-

gle subject rule would apply to initiatives as well as laws passed by the legislature, but held in the case of I-134 (campaign reform) that it complied with the rule.¹⁸

The first time the court applied the single subject rule to strike down an initiative was in 2000 when I-695 was invalidated. The court concluded that the two parts of the initiative – 1) reduction of motor vehicle taxes and 2) requirement of a public vote on most tax and fee increases – were not rationally related and thus covered two distinct subjects. The court also held that the initiative violated the title requirement in sec.19, as well as two other provisions of the state constitution.¹⁹

One local scholar, James Bond, former Dean of the University of Puget Sound and Seattle University School of Law, criticizes the Washington Supreme Court for its decisions on the constitutionality of I-695. He contends that in these decisions the court has applied a more stringent test of con-

**Figure 1
Initiatives Found Unconstitutional**

<p>#69 (1932) <i>ADOPTION OF GRADUATED INCOME TAX.</i> Did not meet constitutional requirement that taxes be uniform upon same class of property.</p> <p>#169 (1948) <i>PAYMENT OF VETERANS BONUS, AUTHORIZING BONDS.</i> The amount (\$100,000,000) exceeded constitutional debt limit (\$400,000).</p> <p># 276 (1972) <i>PUBLIC DISCLOSURE.</i> The part that limited campaign spending was declared unconstitutional on the basis of being vague and of infringing on freedom of speech.</p> <p># 316 (1979) <i>MANDATORY DEATH PENALTY.</i> Violated eighth and fourteenth amendments of U. S. Constitution.</p> <p>#335 (1977) <i>REGULATION OF MORAL NUISANCES (OBSCENITY).</i> The statute was based on prior restraint and restricted freedom of speech; also it had no standards for judicial determination of obscenity.</p> <p>#350 (1979) <i>PROHIBITION OF MANDATORY SCHOOL BUSING.</i> Impermissible legislative classification was based on racial criteria.</p>	<p>#383 (1981) <i>BAN ON IMPORT OF RADIOACTIVE WASTE INTO WASHINGTON.</i> The statute did not recognize supremacy of federal law over state law and infringed on freedom of commerce.</p> <p>#394 (1981) <i>WASHINGTON STATE ENERGY FINANCING ACT (WPPS).</i> Statute impaired contractual obligations.</p> <p>#573 (1998) <i>TERM LIMITS.</i> Limitation of terms which certain elected officials could serve required constitutional amendment.</p> <p>#695 (2000) <i>LICENSE TABS LIMITED TO \$30, AND CERTAIN TAXES AND FEES REPEALED.</i> Violated constitutional requirement of single subject and title reflecting subject.</p> <p>#722 (2001) <i>LIMITING PROPERTY TAX GROWTH TO 2% PER YEAR, AND REFUNDING TAX AND FEE INCREASES IMPOSED IN THE SECOND HALF OF 1999.</i> Violated single subject rule.</p>
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From the Office of the Secretary of State

stitutionality than to bills passed by the legislature. He takes the court to task for what he sees as a failure to develop a coherent rationale for the different standards it applies. He notes the likely political fallout from the court’s invalidation:

“Progressives will doubtless applaud the court’s decision as preserving the government’s authority to tax so that it can generate revenues, which they believe are desperately needed to fund government programs. Populists will simply wonder who they need to throw out – the justices or the legislators – if they are ever going to get control of what they (quaintly?) think of as ‘their’ government.”²⁰

Another legal scholar, Richard J. Ellis, expresses a contrary point of view in arguing that there is justification for applying a stricter rule to initiatives than bills passed by the legislature:

“Without a strict single-subject rule, it is

generally impossible to know which if any parts of a successful initiative express the majority view. The rationale behind a law produced by the legislature is more complex than simple majority rule. Legislatures are designed to produce compromises among competing interests. The final law may well be nobody’s first choice yet be preferable because it represents a consensual second choice with which most everybody can live.”²¹

Appropriation Clause –

It has been suggested that initiatives with a fiscal impact could be challenged under the Appropriation Clause – Article VIII, Section 4 of the Washington State Constitution . It provides as follows: “No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law” The Washington Supreme Court has affirmed that the object of the appropriation article is to preclude

Limitations Governing Public Officials

Public Officials enjoy free speech when it comes to ballot issues as long as they are not using public resources. As a general rule, the Washington State Ethics Law of 1994 prohibits the use of public resources by state officers or state employees to support or oppose a ballot measure. However, since ballot measures are matters of public policy, several exceptions are allowed to permit comment on ballot measures (to the right).

The governor has a unique role under the Constitution, which allows him/her to communicate with the Legislature and to recommend measures as shall be deemed expedient for their action. This mandate allows the governor to communicate with the people, so long as the expense is for a reasonable communication and not an extensive lobbying campaign.

Figure 2

Allowable Actions for Public Officials and Employees

Legislators, state officers and public employees may:

- make a statement in support of or in opposition to any ballot proposition at an open press conference, provided the press conference was not called to launch or actively and directly assist or oppose the initiative;
- respond to a specific inquiry regarding a ballot proposition;
- make incidental remarks concerning a ballot proposition in an official communication or may otherwise comment on a ballot proposition if done without the actual, measurable expenditure of public funds;
- make very minimal use of public facilities to initiate "permissible" communications, written or verbal, concerning ballot propositions that fall within their statutory or constitutional responsibilities;
- respond to questions about their view of an initiative and provide their positions to staff who can, with the legislator's permission, pass them on to people who inquire;
- choose how to address an initiative in a newsletter by either encouraging people to vote and including a balanced and objective description of the initiative, **or** including direct comment on the merits making no reference to voting, provided there was a bill on the same subject matter in the preceding session. If legislators choose to comment on the merits of the initiative in a newsletter, those comments must be within the context of a larger message. Therefore, it would not be proper to devote all or most of the newsletter to advocacy; and
- prepare a guest editorial on the initiative using factual, non-partisan information, which does not take the form of an argument for or against the measure;
- promote or oppose any ballot measure as long as there is no use of public resources.

Ideas for Change

Many proposals have been made that would change the initiative process in response to the concerns of its critics and supporters. These include changing signature gathering procedures, providing more information to voters, restricting the subjects that can be addressed by initiative and combining advantages of a direct initiative process (initiatives to the people) with an indirect initiative process (initiatives to the legislature) which would include the advantages of a representative form of government.

- **Require prior review of constitutionality** to avoid later invalidation of an initiative passed by the voters. Suggestions have been made for

constitutional review prior to collecting signatures. Such consideration could be performed by a court, the attorney general, or a special agency or commission. Several states require such reviews. The Florida Supreme Court, for example, reviews initiatives for constitutionality (including compliance with the single subject rule) after petitioners gather 10 percent of the signature requirements.

Courts in Washington are generally averse to making any decision until an issue is ripe, i.e., until the issues are fully developed and argued by plaintiff and defendant, which can oc-

Exhibit 2

cur only after an initiative is adopted by the voters. A further argument against any court review prior to submission is that the courts are the ultimate decision makers on the legality of law. It's possible the judges or justices may be in conflict with an earlier advisory opinion they had participated in. In Washington, the attorney general is responsible for defending an initiative once passed. Thus, there could be a conflict were she or her office designated to review an initiative prior to submission.

- **Require that an initiative be reviewed by a court** as to its constitutionality before it is placed on the ballot. A negative opinion would not block an initiative but the opinion would appear in the voters' pamphlet.
- **Create a commission for non-binding review.** Hugh Spitzer, attorney in private practice and an affiliate professor at the University of Washington School of Law, argues against any advisory opinion by the courts—either early or late in the initiative process. Rather, he proposes creation of a small, non-partisan, unpaid commission, with a paid staff. Commissioners would be appointed by the governor and confirmed by the senate—possibly utilizing former judges. The commissioners would be available to review draft initiatives and offer non-binding advice on potential legal problems. “[S]uch a commission might give both proponents and voters an earlier perspective on constitutional issues that could later cause an initiative’s demise.” The findings would be advisory only and could be published in the voters’ pamphlet.”²³
- **Provide for citizen initiative review following certification.** Initiatives would be submitted to a representative citizen review panel whose views would appear in the voters’ pamphlet. A citizen review concept, called Citizen Jury, developed by political scientist Ned Crosby and the Minneapolis based Jefferson Center for New Democratic Processes has been used to provide an informed citizen process on public policy matters, including ballot measures. As proposed for Washington State in a

program called Citizens Initiative Review, this technique could be used with a panel made up of Washington “jurors” selected from around the state to reflect the state population in terms of gender, race, age, education, geographic location and political identification. The panel of citizens would be convened for a five-day period to review a proposed initiative. Panelists would be paid for their time (average Washington wage, currently \$130 per day), transportation, and housing. They would take testimony from expert witnesses and supporters and opponents of the initiative, ask questions, seek additional information, if needed, and deliberate carefully. At the end of the review, the panelists would indicate how they would vote on the initiative if the election were held that day, and the reasons for their decisions. Panelists would also oversee publication of a report outlining their reasons for supporting or opposing the initiative or remaining undecided. The report would then be published in the state voters’ pamphlet. The estimated cost of this program is between \$700,000 and \$1,450,000 per year, depending on the number of initiatives to be reviewed, which would average out to a maximum of 25 cents a year per Washington resident. Proposers recommend that the funds come from interest earned by the state's general fund.

Those in favor of the project see it as a source of sound information for voters about the possible effects of initiatives, and a way to insert an informed citizen voice into a highly politicized discussion. Although some media do attempt to analyze these measures objectively, others only inundate voters with campaign sound bites that deliver contradictory messages. The state voters’ pamphlet offers pro and con statements written by the campaigns with no comment on the veracity of the information.

Some people are opposed to publicizing any special group’s judgment or opinion at state expense, (this jury process as well as the voters’ pamphlet). Others challenge the concept that a representational panel could be as-

Exhibit 2

sembled. Nor could their report reflect new information developed during the campaign. Other people oppose the idea because of the high cost. The interest from the general fund is already being used.

- **Allow for public hearings by the legislature and/or forums held by the Secretary of State.** Initiatives often reflect a narrow, self-interest of the sponsors that is not always apparent to the public. Public hearings would provide an opportunity for comment from various sectors of society and from various regions of the state on the broader effects of an initiative. Some people worry that this would infringe on the peoples' independence to propose legislation as provided in the Washington State Constitution. The Supreme Court has never considered this issue.
- **Allow perfection of the text at some point in the campaign.** The California Commission recommended that a public hearing be conducted on the merits of an initiative once 25% of the necessary signatures have been obtained, and that the proponents be allowed to amend their proposal within seven days after the hearing as long as the changes are consistent with the initiative's original purposes and intent.
- **Encourage public officials to comment on ballot issues.** All legislators do not take a uniform view of the allowances and restrictions on their speech. They have different views of what is objective, balanced, measurable, etc. As a result, they have different levels of comfort about communicating on ballot measures. Real or perceived infractions can be the subject of complaints to the Legislative Ethics Board, in which case the Board will make a determination as to whether the legislator has overstepped the boundaries of the law. Legislators would wish to avoid such complaints, and some would use the law to avoid making comments on the measure.
- **Relax restrictions on public officials.** Allow state and local elected officials to use public facilities to prepare and deliver self-initiated communications of information on the impact

that any ballot proposition foreseeably may have on matters that fall within their responsibilities. The exception could apply to all ballot measures, not just those that go through the legislature.

- **Require the full text** of laws, or parts of laws, to be repealed to be displayed in the initiative. It is very confusing not to know just what change in an existing law is being proposed. Such a requirement should make it clear. It might, however, make the initiative excessively long and considerably more expensive to print and circulate.
- **Require personal financial disclosure** by initiative and referendum sponsors. This would be similar to the disclosure required by candidates and public officials. It could clarify the intent and interest behind the proposed law, but some feel it would be an unacceptable infringement of personal rights with no public benefit.
- **Restrict subject matter:**
 1. Prohibit initiatives that affect the use of public funds.
 2. Require that a source of revenue be identified in the initiative, either an increase in an existing state revenue source or a new tax or fee, if a proposed initiative needs public funds for its implementation.
 3. Require that specific language be included specifying how reductions are to be reflected in state budgets, either direct reductions for a specific function or agency, or amend a current budget if an initiative repeals or restricts taxes or fees.

Washington's legislature is charged with approving a balanced budget to run the state government and provide the services required and desired by the state's citizens. According to Marty Brown, Director of the Office of Financial Management, "89% of the current budget goes to educate, medicate, and incarcerate." Initiatives that remove or limit sources of revenue or increase spending undermine the ability of the legislature to carry out this primary duty.

Those opposed to such restrictions believe that

Exhibit 2

reducing revenue by initiative has become the only way to force the legislature to rein in state spending. They expect legislative compromise in making hard choices between many competing interests. Others believe the legislature's hands are already tied with "earmarked" funds. Some of these suggestions would further remove legislative flexibility.

- **Increase the cost of filing an initiative.** The filing fee has been five dollars since 1912. Since there are costs borne by the state to process initiatives from the moment they are filed, some believe the fee should be increased. Suggestions run from \$100 to \$500. The Secretary of State has urged that the fee be \$100 in order to discourage frivolous filings. Some people, however, believe that processing initiatives is a normal function of state government and citizen participation shouldn't be discouraged by raising the fee.
- **Provide that the filing fee be refunded** if enough signatures are collected to certify the initiative for the ballot.
- **Require that signatures be collected on a proportional, geographical basis in order to qualify for the ballot.** This could be done by requiring:
 1. an equal number of signatures from each Congressional or Legislative district,
 2. a minimum number from each district, or,
 3. a percentage from each district of those who voted in the last election.

Such changes could also increase the difficulty (and expense) of gathering enough signatures, depending upon the requirements. They might also give a disproportionate number of voters veto power over a ballot issue that was supported by a majority of the state's voters.

- **Change the number of signatures required to qualify any initiative.** Those interested in making the process easier to get on the ballot suggest a lower signature requirement. Those interested in making the process more difficult would support increasing the signature requirement.
- **Lengthen the time allowed for collecting signatures.** Most states allow more time than

does Washington. An owner of a signature gathering firm suggests that reducing the number of necessary signatures to four or five percent, and allowing a year to collect signatures could almost eliminate the need for professional signature gatherers.

- **Allow constitutional amendment by initiative.** Two-thirds of the 27 I&R states allow constitutional changes. Supporters argue that since the legislature has this power, the people should also. Right now the people can institute such changes only by calling a constitutional convention by initiative. Those opposed consider the constitution too basic to our freedoms to be changed by a simple majority of the voters. As it stands now, the legislature requires a super majority to pass a constitutional amendment, and then it must be submitted to a vote of the people.
- **Extend the I&R process** to single purpose governments. The people should have the same ability to exert change in the legislation of bodies such as port and school districts. Opponents say that initiatives are not needed for single purpose districts since they are so close to the people already.
- **Amend the Constitution to permit only initiatives to the legislature.** In order to take advantage of the opportunity to deliberate, debate and compromise when tackling a governmental issue, direct initiatives would be abolished and all initiatives would be initiatives to the legislature. Some people believe this change would combine the advantages of both types of initiative. It would protect an individual's right to propose legislation, and provide a way to adjust for unintended consequences. A certified initiative would be either passed into law by the legislature without the need for an election, or it would go on the ballot either alone or along with a legislative alternative. Voters' choices would not be diminished and the sponsors of an initiative would still be assured that their initiative would be on the ballot unless passed by the legislature without change.

Several suggestions have been made to im-

Exhibit 2

plement this proposal:

1. reduce the number of signatures required to qualify an initiative to the legislature, perhaps to four percent of those voting in the last gubernatorial election, or perhaps six percent, somewhere between the requirement for referenda and the current initiative requirement.
2. limit this proposal only to those initiatives dealing with expenditures and revenue, those initiatives that bump up against the legislature's constitutional directive to appropriate funds.
3. incorporate a dollar limit. An initiative increasing or reducing revenue by a specified amount could only be an initiative to the legislature.
4. lengthen the time allowed for collecting signatures when an initiative is one to the legislature.

Each of these suggestions could be adopted as an incentive to persuade initiative sponsors to use the indirect initiative procedure.

Law making by the people provides an opportunity for the public to address issues which the legislature cannot or will not address. While some people feel that it encourages the legislature to tackle problems it otherwise would not address, others contend that it permits legislators to dodge dealing with hard divisive issues. Law making by the legislature involves a deliberative process that includes

committee work, often public hearings, compromises and checks and balances. Initiatives that undergo both processes would benefit from both, but, unless the legislature passed the initiative as is, it would take longer to see the law changed.

Opponents point out that it would remove the most popular type of initiative. Until now 774 initiatives to the people have been filed, as opposed to 258 initiatives to the legislature. At a recent symposium on I&R, Shawn Newman offered his opinion as to why most initiative filers have chosen not to use the indirect method:

“It provides for de facto use of state resources to fight the initiative as it makes its way through the legislative sausage machine. Historically, the reason behind direct initiatives in this state was because the people distrusted the legislature and the special interests that controlled it. Those reasons remain true today as they did nearly 100 years ago. Anything that dilutes, reduces or burdens the I&R power should be opposed.”

- **Require a higher percentage of voter approval** for initiatives to the people to compensate for the lack of involvement by any elected body.

Conclusion

Washington State voters have used the initiative system for many issues since its advent in 1912. It's been used to create the Public Disclosure Commission and to effect redistricting. It's been used to bring about social change with the passage of the state Equal Rights Amendment and attempts both to expand and restrict abortion rights. It's also been used to influence tax policy and restrict government spending.

Stuart Elway, in reporting in his monthly publi-

cation The Elway Poll in March of 2000, made the following comments on research he'd done on Washington voters' attitudes about the initiative process:

“The public debate about the initiative process – reinvigorated by the passage of I-695 – is largely about trust. Critics of the process don't trust the voters to know what they are doing, and defenders of the process don't trust elected representatives

Exhibit 2

to always act in the best interests of 'the people'.

“Large majorities of those who were polled favored more disclosure, not barriers. For instance, they wanted the state attorney general to review initiatives for constitutionality, the budget office to review financial impacts and initiative campaigns to disclose if they are using paid signature gatherers. At the same time, they opposed raising the number of signatures required to qualify a measure for the ballot.”

Elway concluded:

“Successful reform strategies would therefore look first to making more information available to voters before trying to make it

more difficult to qualify initiatives for the ballot. Washington voters are not in any mood to give up political power.”

Several initiatives have been on the ballot and passed since 2000, resulting in increasingly difficult budget decisions for lawmakers. At the same time the economy has weakened and government surpluses have disappeared. Are voters ready to take another look at the initiative process? Is it possible or even desirable to try to bridge the gap between the initiative process and the legislative process?

League members, through this study, have an opportunity to decide if the system is working as it should, or if some changes might make it work better.



Endnotes

1. Taking Shelter Behind the First Amendment: The Defense of the Popular Initiative, THE BATTLE OVER CITIZEN LAWMAKING, A Collection of Essays, M. Dane Waters, ed. Carolina Academic Press, at 168 (2001).
2. DIRECT LEGISLATION: VOTING ON BALLOT PROPOSITIONS IN THE UNITED STATES, Baltimore: Johns Hopkins University Press (1984)
3. U.S.CONST. Article IV, Section 4.
4. The United States Supreme Court held that a challenge under the guarantee clause was a nonjusticiable political question, which must be left to congress. *Pacific States Telephone and Telegraph Co. v. Oregon*, 223 U.S. 118, 150-51 (1912). Similarly, the Washington Supreme Court has ruled in two cases that the issue was nonjusticiable. *Hartvig v. City of Seattle*, 53 Wa. 432, 102 P. 408 (1909); *State v. Manussier*, 129 Wa. 652, 921 P.2d 473 (1996). Despite the recent ruling, opponents of the initiative point out that the ruling was mere dicta, unsupported by legal reasoning, and a properly researched and argued case could persuade the Washington Court. See Brewster Denny, "Initiatives – Enemy of the Republic," 24 SEATTLE U. L. REV. SYMPOSIUM at 1023 (Spring 2001); Steven William Marlowe, "Direct Democracy Is Not Republican Government," id. at 1044-48. But see Kenneth P. Miller, "Courts as Watchdogs of the Washington State Initiative Process," id. at 1071-72 (pointing out how unlikely it would be for a court today to restrict "the ability of the people to exercise a legislative function they have utilized for nearly a century," quoting Jeffrey T. Even, Wash. Ass't Att'y Gen).
5. 24 SEATTLE U. L. REV. supra at 1059.
6. *Kennedy v. Reeves*, 22 Wash.2d 677, 683-84 (1945).
7. WATCH, monthly newsletter published by CLEAN (Citizens for Leaders with Ethics and Accountability Now), Jan. 1997, referring to *CLEAN v. State*, 30 Wash.2d 782, 928 P.2d 1054 (1996).
8. DEMOCRACY DERAILED: INITIATIVE CAMPAIGNS AND THE POWER OF MONEY, Harcourt, Inc. 2000, at 163-171.
9. THE BATTLE OVER CITIZEN LAWMAKING, supra.
10. *Buckley v. Valeo*, 424 U.S. 1, 1976.
11. 486 U.S. 414 (1988)
12. *L.I.M.I.T v. Maleng*, 874 F.Supp. 1138 (W.D. Wash. 1993).
13. *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1988).
14. *Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614 (8th Cir.2001).
15. *Moore v. Ogilvie*, 394 U.S. 814 (1969).
16. See e.g. *Walmart v. Progressive Campaigns, Inc.*, 139 Wash. 2d 623 (1999), 989 P.2d 524 (1999) and cases cited therein. Previously, the U. S. Supreme Court recognized that a state's constitutional provision for free speech and the initiative as extended to a shopping center did not violate the U.S. constitution's protection of private property. *Pruneyard Shopping Center v. Robbins*, 447 U. S. 74 (1980).
17. *Initiative & Referendum Institute v. U.S. Postal Service* (Fed. District for the District of Columbia,) 1:00CV01246.
18. *Washington Federation of State Employees v. State of Washington*, 901 P.2d 1028 (Wash. 1995).
19. *Amalgamated Transit v. State*, 142 Wash.2d 183, 11 P.3d 762 (2000).
20. "The Initiative Process: The Supreme Court Versus the People," 56 WASH. STATE B.NEWS at 44 (June 2002).
21. DEMOCRATIC DELUSIONS, THE INITIATIVE PROCESS IN AMERICA at 144, Univ. Press of Kansas, 2002.
22. *Peel v. Clausen*, 94 Wash. 166 (1917). See Philip A. Talmadge, Introduction, Seattle U. L. Rev., supra at 1020-23, discussing the effect of contradictory initiatives on the budget actions of the legislature.
23. "Take the Initiative on Constitutionality," WASH. STATE B. NEWS, at 37-38 (Oct. 2000).

Appendix

Table 3 – Reported Expenditures Supporting and Opposing Statewide Initiatives, 1975-2001

Election Year	Initiative Number	Subject	Expenditures	
			For	Against
1975	314	Corporate franchise tax	\$ 106,506	\$ 474,309
1975	316 *	Mandatory death penalty	14,006	970,588
1976	322	Outlawing fluoridation of public water supplies	33,424	80,302
1976	325	Regulating nuclear power facilities	117,740	
1977	335 *	Prohibiting obscene films & publications	84,995	
1977	345 *	Eliminating sales tax on food	20,865	103,994
1977	348	Repealing variable gasoline tax	43,130	418,868
1977	59	Limiting use of public irrigation water	78,412	64,536
1978	350 *	Prohibiting mandatory busing	150,266	14,624
1979	61	Beverage container deposits	71,762	967,758
1979	62 *	Limiting state tax revenues	170,351	52,913
1980	383 *	Banning importation of radioactive wastes	75,742	76,696
1981	394 *	Requiring voter approval of major energy project bonds	203,998	1,220,928
1981	402 *	Abolishing inheritance and gift taxes	225,335	823
1982	412	Setting a maximum rate of interest on retail sales	278,203	1,557,987
1982	414	Beverage container deposits	247,547	952,361
1982	435	Corporate franchise tax to replace sales tax on food	24,503	398,336
1984	456 *	Indian Fishing rights	167,580	249,517
1984	464 *	Excluding trade-in values from sales tax computations	90,832	--
1984	471	Prohibit public funding of abortions	113,026	155,363
1986	90	Funding comprehensive fish and wildlife conservation and recreation programs	165,325	--
1987	92	Limiting physicians' charges for Medicare patients	215,443	736,463
1988	518 *	Increasing minimum wage	178,276	16,432
1988	97 *	Taxing hazardous substances to finance waste cleanup	316,105	--
1988	97 B	(Legislature's alternative hazardous waste cleanup)	1,264,409	--
1989	102	Children's Initiative	629,987	134,575
1990	547	Growth Management	311,186	1,674,757
1991	119	Death with dignity	1,734,100	516,562
1991	120 *	Abortion	1,451,954	407,496
1991	119 & 120	Additional expenditures opposing both issues		1,072,794
1991	553	Term limits	719,445	363,875
1991	559	Property tax revision	39,708	254,636
1992	134 *	Campaign contribution limits	222,149	194,155
1992	573 *	Term limits	405,967	190,322
1993	593 *	Three strikes, you're out (Sentencing reform)	210,593	--
1993	601 *	Limit tax increases	46,433	--
1993	602	Limit revenue collections	1,557,056	1,555,600
1994	601 & 602	Additional expenditures opposing both of above two issues		2,050,779
1994	43	Extend tax on cigarettes, etc. to fund violence reduction and drug enforcement programs	76,574	120,000
1994	607 *	Freedom of choice for denture care	339,199	57,282
1995	45 *	Appointment of Fish and Wildlife Director	99,549	14,828
1995	48	Land use regulations	1,168,234	969,413
1995	640	State fishing regulations	421,620	955,408
1995	651	Gambling on Indian lands	1,360,024	439,997
1996	173	School vouchers	20,045	--
1996	177	Independent school districts	1,016,948	--
1996	173 & 177	Additional expenditures opposing both issues		1,126,562
1996	655 *	Bear baiting ban	507,731	225,485
1996	670	Term limits supporters	218,065	--
1996	671	Tribal slot machines	2,128,081	156,545
1997	48 *	Sports stadium/Exhibition center	6,259,692	729,747
1997	673	Health insurance	500,473	1,716,350
1997	676	Handgun device	1,153,763	3,406,425
1997	677	Sexual orientation	925,974	77,675
1997	678	Dental hygienists	502,065	685,085
1997	685	Drug policy	1,563,672	111,853
1997	47 *	Property tax reform	651,863	
1997	4208 *	School district levies	113,324	
1998	200 *	Race, gender	505,491	1,680,752
1998	49 *	Transportation funding	804,829	274,603
1998	688 *	Increase minimum wage	585,294	
1998	692 *	Medical use of marijuana	786,310	15,810
1998	694	Prohibiting partial birth abortions	195,644	792,588
1999	695 *	Repeal existing vehicle taxes; \$30 vehicle license tabs	284,910	2,207,740
1999	696	Prohibiting certain methods of commercial fishing	232,344	506,698
2000	713 *	Animal trapping	927,455	381,014
2000	722 *	Tax repeal/limits	544,293	580
2000	728 *	School class sizes	1,186,338	--
2000	729	Charter schools	3,250,513	11,157
2000	732 *	Teacher salaries	1,570,665	--
2000	745	Transportation funding	2,750,015	1,282,243
2000	8214 *	State trust fund investment	--	--
2001	747 *	Limiting property tax increases	663,308	917,175
2001	773 *	Additional tobacco taxes	1,442,256	136,377
2001	775 *	Long-term in-home care services	1,292,243	--
2001	8208 *	Use of temporary superior court judges	15,561	--
2001	4202	Investment of state funds	--	--

* Measure adopted by majority vote of the people

Appendix

– Table 4 –
Yearly Summary of Initiatives to the People: 1914 through 2001

Year	No.	Subject	Result
1914	3	Statewide Prohibition	Approved
	6	Blue Sky Law	Rejected
	7	Abolishing Bureau of Inspection	Rejected
	8	Abolishing Employment Offices	Approved
	9	First Aid to Injured	Rejected
	10	Convict Labor Road Measure	Rejected
	13	Eight Hour Law	Rejected
1916	18(1A)	Brewers' Hotel Bill	Rejected
1922	40	Relating to the Poll Tax	Approved
	46	"30-10" School Plan	Rejected
1924	49	Compulsory School Attendance	Rejected
	50	Limitation of Taxation	Rejected
	52	Electric Power Measure	Rejected
1930	57	Redistricting	Approved
1932	58	Permanent Registration	Approved
	61	Relating to Intoxicating Liquors	Approved
	62	Creating Department of Game	Approved
	64	Limiting Taxes	Approved
	69	Income Tax Measure	Approved
1934	77	Fishing & Fish Traps	Approved
	94	40-Mill Tax Limit	Approved
1936	101	Civil Service	Rejected
	114	40-Mill Tax Limit	Approved
	115	Old Age Pension	Rejected
	119	Production for Use	Rejected
1938	126	Non-Partisan School Election	Approved
	129	40-Mill Tax Limit	Approved
	130	Regulation of Labor Disputes	Rejected
1940	139	P.U.D. Bonds	Rejected
	141	Old Age Pension	Approved
1942	151	Old Age Assistance	Rejected
1944	157	Old Age Assistance	Rejected
	158	Old Age Assistance	Rejected
1946	166	Public Utility Districts	Rejected
1948	169	Bonus to World War II Veterans	Approved
	171	Liquor by The Drink	Approved
	172	Social Security Laws	Approved
1950	176	Public Assistance Grants	Rejected
	178	Citizens' Security Act	Approved
1952	180	Colored Margarine	Approved
	181	Observance of Standard Time	Approved
	184	Old Age Pension Laws	Rejected
1954	188	Chiropractic Examinations	Rejected
	192	Commercial Salmon Fishing	Rejected
	193	Daylight Saving Time	Rejected
	194	Television Alcoholic Beverage Ads	Rejected
1956	198	Employer-Employee Relations	Rejected
	199	Redistricting	Approved
1958	202	Labor Agreements	Rejected
1960	205	Liquor Licenses	Rejected
	207	Civil Service for State Employees	Approved
	208	Joint Tenancy	Approved
	210	Daylight Saving Time	Approved
1962	211	Redistricting	Rejected
1964	215	Marine Recreation Land Act	Approved
1966	226	Cities Sharing Sales-Use Taxes	Rejected
	229	Sunday Activities Blue Law	Approved
	233	Freight Train Crew Law	Approved

Year	No.	Subject	Result
1968	242	Driver's Implied Consent	Approved
	245	Reducing Maximum Interest	Approved
1970	251	Regulate Imposition of Taxes	Rejected
	256	Bottle Bill	Rejected
1972	258	Dog Racing	Rejected
	261	Liquor Sales by Retailers	Rejected
	276	Disclosure	Approved
1973	282	Elected Officials Salaries	Approved
1975	314	Corporate Taxes	Rejected
	316	Mandatory Death Penalty	Approved
1976	322	Fluoridation	Rejected
	325	Nuclear Power Facilities	Rejected
1977	335	Pornography	Approved
	345	Exempt Food from Sales Tax	Approved
	348	Repeal Variable Fuel Tax	Rejected
1978	350	School Busing	Approved
1980	383	Ban Radioactive Waste Import	Approved
1981	394	Approval/Public Energy Projects	Approved
	402	Abolish Inheritance Tax	Approved
1982	412	Maximum Interest Rates	Rejected
	414	Bottle Bill	Rejected
	435	Sales Tax on Food	Rejected
1984	456	Fishing & Indian Rights	Approved
	464	Trade-Ins Tax Exempt	Approved
	471	Public Funding of Abortion	Rejected
1988	518	Raise Minimum Wage	Approved
1990	547	Growth & Environment	Rejected
1991	553	Term Limits	Rejected
	559	Property Taxes	Rejected
1992	573	Term Limits	Approved
1993	593	Sentencing of Criminals	Approved
	601	Tax & Spending Limits	Approved
	602	Tax & Spending Limits	Rejected
1994	607	Licensing of Denturists	Approved
1995	640	State Fishing Regulations	Rejected
	651	Gambling on Indian Lands	Rejected
1996	655	Bear-Baiting	Approved
	670	Ballot Notices/Term Limits	Rejected
	671	Gaming on Indian Lands	Rejected
1997	673	Health Insurance	Rejected
	676	Handgun Trigger Locks	Rejected
	677	Anti-discrimination/Sexual Orientation	Rejected
	678	Licensing of Dental Hygienists	Rejected
	685	Drug medicalization	Rejected
1998	688	Raise Minimum Wage	Approved
	692	Medical Use of Marijuana	Approved
	694	Late-term abortions	Rejected
1999	695	License Tabs/Tax Limitations	Approved
	696	Commercial Fishing Restrictions	Rejected
2000	713	Animal Trapping	Approved
	722	Tax Repeal/Limits	Approved
	728	School Class Sizes	Approved
	729	Charter Schools	Rejected
	732	Teacher Salaries	Approved
	745	Transportation Funding	Rejected
2001	747	Limiting Property Tax Increases	Approved
	773	Low Income Health Programs	Approved
	775	Long-term In-home Care Services	Approved

Appendix

– Table 5 –

Initiatives to the Legislature Approved/Rejected: 1914-2001

Approved by the Legislature:

<i>Year</i>	<i>No.</i>	<i>Subject</i>
1934	2	Blanket Primary
1942	12	Public Power Resources
1989	99	Presidential Primary
1994	159	Criminal Sentencing/Firearm Use
	164	Restricting Land Use Regulation

On the Ballot:

If the Legislature rejects or takes no action on an Initiative to the Legislature, the measure is automatically placed on the next general election ballot. The Legislature also has the option of placing an alternative proposal on the ballot with the original measure.

<i>Year</i>	<i>No.</i>	<i>Subject</i>	<i>Result</i>
1928	1	District Power Measure	Approved
1956	23	Civil Service for Sheriffs Employees	Approved
1958	25	Dam Construction/Water Diversion	Approved
1971	40	Litter Control Act	Approved Alternative
	43	Shoreline Use & Development	Approved Alternative
	44	Tax Limitation	Approved
1977	59	Public Water Appropriations	Approved
1979	62	Limit State Revenues	Approved
1988	97	Cleanup of Hazardous Waste	Approved
1991	120	Abortion-Pro Choice	Approved
1992	134	Limiting Campaign Contributions	Approved
1998	200	Employment Discrimination	Approved

Appendix

– Table 6 –
Referendum Bills Adopted
(Measures passed by the Legislature and referred to the voters)

Bill #	Definition	Referred to Voters
2	Soldier's Equalized Compensation	1922
5	40-Mill Tax Limit	1940
6	Taxation of Real and Personal Property	1942
7	\$40,000,000 Bond Issue to give State Assistance in Construction of Public School Plant Facilities	1950
8	\$20,000,000 Bond Issues to Provide Funds for Buildings at State Operated Institutions	1950
10	\$25,000,000 Bond Issue to Provide Funds for Buildings at State Operated Institutions and State Institutions of Higher Learning	1958
11	Outdoor Recreation Bond Issue	1964
12	Bonds of Public School Facilities	1964
13	Bonds for Juvenile Correctional Institution	1964
14	Bonds for Public School Facilities	1966
15	Bonds for Public Institutions	1966
16	Congressional Reapportionment and Redistricting	1966
17	Water Pollution Control Facilities Bonds	1968
18	Bonds for Outdoor Recreation	1968
19	State Building Projects; Bond Issue	1968
20	Changes in Abortion Law	1970
21	Outdoor Recreation Bonds; Sales; Interest	1970
23	Pollution Control Bonds; Sales; Interest	1970
24	Lobbyists – Regulation, Registration and Reporting	1972
25	Regulating Certain Electoral Campaign Financing	1972
26	Bonds for Waste Disposal Facilities	1972
27	Bonds for Water Supply Facilities	1972
28	Bonds for Public Recreation Facilities	1972
29	Health, Social Service Facility Bonds	1972
31	Bonds for Community College Facilities	1972
33	Shall personalized motor vehicle license plates be issued with resulting extra fees to be used exclusively for wildlife preservation?	1973
36	Shall certain appointed state officers be required to file reports of their financial affairs with the Public Disclosure Commission?	1976
37	Shall \$25 million in state general obligation bonds be authorized for facilities to train, rehabilitate and care for handicapped persons?	1979
38	Shall \$125 million in state general obligation bonds be authorized for planning, acquisition, construction and improvement of water supply facilities?	1980
39	Shall \$450,000,000 in state general obligation bonds be authorized for planning, designing, acquiring, constructing and improving public waste disposal facilities?	1980
40	Shall state officials continue challenges to the federal selection process for high-level nuclear waste repositories and shall a means be provided for voter disapproval of any Washington site?	1986
42	Shall enhanced 911 emergency telephone dialing be provided throughout the state and be funded by a tax on telephone lines?	1991
43	Shall taxes on sales of cigarettes, liquor, and pop syrup be extended to fund violence reduction and drug enforcement programs?	1994
45	Shall the fish and wildlife commission, rather than the governor, appoint the department's director and regulate food fish and shellfish?	1995
47	Shall property taxes be limited by modifying the 106 percent limit, allowing property valuation increases to be spread over time, and reducing the state levy?	1997
48	Shall a public stadium authority be authorized to build and operate a football/soccer stadium and exhibition center financed by tax revenues and private contributions?	1997
49	Shall motor vehicle excise taxes be reduced and state revenues reallocated; 1.9 billion for state and local highways?	1998

Appendix

– Table 7 –
Referendum Measures Which Succeeded in Nullifying the Law

Referendum #	Definition	Date
1	Teachers' Retirement Fund	1914
2	Quincy Valley Irrigation Measure	1914
3	Relating to Initiative and Referendum	1916
4	Recall of Elective Public Officers	1916
5	Party Conventions Act	1916
6	Anti-Picketing	1916
7	Certificate of Necessity Act	1916
8	Port Commission	1916
9	Budget System	1916
12B	Certificate of Necessity	1922
13B	Physical Examination of School Children	1922
14B	Primary Nominations and Registrations	1922
15	Party Conventions	1922
16	Butter Substitutes	1924
23	Providing for Legal Adviser for Grand Juries	1942
24	Prosecuting Attorneys; Providing that they shall no longer give advice to Grand Juries	1942
25	Relating to Public Utility Districts	1944
26	Relating to appointment of State Game Commissioners by the Governor	1946
27	Relating to the creation of a State Timber Resources Board	1946
28	Relating to accident and health insurance covering employees eligible for unemployment compensation	1950
30	Inheritance Tax on Insurance Proceeds	1958
32	Washington Stat Milk Marketing Act	1962
33	Private Auditors of Municipal Accounts	1962
34	Mechanical Devices, Salesboards, Cardrooms, Bingo	1964
36	Minimum Age – Alcoholic Beverage Control	1973
39	Shall certain changes be made in voter registration laws, including registration by mail and absentee voting on one day's registration?	1977
40	Shall a state Women's Commission be established by statute?	1977
48	Restricts land-use regulations and expands governments' liability to pay for reduced property values of land or improvements thereon caused by certain regulations for public benefit.	1995

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Waters, M. Dane, Editor. *The Battle Over Citizen Lawmaking* (a collection of essays). Durham, NC: Carolina Academic Press. Sponsored by The Initiative and Referendum Institute, 2001.

Zimmerman, Joseph F. *Participatory Democracy:*

Populism Revived. New York: Praeger, 1986.

Websites for the Initiative Study

The Ballot Initiative Strategy Center (BISC has an on line monthly ballot measure update)
<http://www.ballot.org>

Center for Voting and Democracy (non-profit, nonpartisan). Has a great on line library
<http://www.igc.apc.org/cvd/>

The Evans School of Public Affairs (U of W)
<http://www.evans.washington.edu/>

The Initiative and Referendum Institute (non-profit, nonpartisan). The web site has good library resources and a companion web site to track ballot measures around the country.
<http://www.iandrinstute.org/>

Municipal Research & Services Center of Washington
<http://www.mrsc.org/>

Public Disclosure Commission (PDC)
www.pdc.wa.gov

The Secretary of State
www.secstate.wa.gov

State of Washington, Office of Financial Management (OFM)
<http://www.ofm.wa.gov>

Sources for Tables

Table 1: Initiative and Referendum Institute

Table 2: Secretary of State

Table 3: Public Disclosure Commission

Tables 4, 5, 6, & 7: Secretary of State

Exhibit 3

Chapter 1.22 INITIATIVE AND REFERENDUM

Sections:

- [1.22.010](#) Purpose.
- [1.22.020](#) Ordinances not subject to initiative and referendum.
- [1.22.030](#) Initiative – Procedures.
- [1.22.040](#) Initiative – Sufficiency of the petition – Determination.
- [1.22.050](#) Initiative – City council action – Calling election.
- [1.22.060](#) Initiative – Ballot title – Ballot statement.
- [1.22.070](#) Initiative – Notice of election.
- [1.22.080](#) Initiative – Conduct of election.
- [1.22.090](#) Initiative – Effective date – Recording.
- [1.22.100](#) Initiative – Appeal to court.
- [1.22.110](#) Initiative – Repeal or amendment.
- [1.22.120](#) Referendum – Procedures.
- [1.22.130](#) Referendum – Filing suspends ordinance – City council action.
- [1.22.140](#) Referendum – Effective date – Record.
- [1.22.150](#) Referendum – Other initiative provisions to apply.
- [1.22.160](#) Restriction or abandonment of powers.
- [1.22.170](#) Ordinances restricting or abandoning powers – Effective date.

1.22.010 Purpose.

The purpose of this chapter is to provide to the qualified electors of the city of Mill Creek the powers of initiative and referendum in accordance with Chapters 35.17 and 35A.11 RCW.

1.22.020 Ordinances not subject to initiative and referendum.

Ordinances of the city of Mill Creek which shall not be subject to the powers of initiative and referendum and which shall become effective five days following their passage and legal publication, or as otherwise provided by the general law or by applicable sections of RCW Title 35A, as now or hereafter amended, are as follows:

- A. Ordinances initiated by petition.
- B. Ordinances necessary for immediate preservation of public peace, health, and safety or for the support of city government and its existing public institutions which contain a statement of urgency and are passed by unanimous vote of the city council.
- C. Ordinances providing for local improvement districts.
- D. Ordinances appropriating money.
- E. Ordinances providing for or approving collective bargaining matters.
- F. Ordinances providing for the compensation of or working conditions of city employees.
- G. Ordinances authorizing or repealing the levy of taxes.

Exhibit 3

H. Any other ordinance or subject matter exempted now or hereafter by state law from initiative and referendum processes.

I. Ordinances enacted under authority delegated exclusively to the legislative body of the city by the state.

1.22.030 Initiative – Procedures.

Ordinances may be initiated by petition of electors of the city of Mill Creek only in accordance with the provisions of this chapter:

A. Recommended Filing. Persons or groups desiring to initiate an ordinance by petition are strongly encouraged to submit to the city clerk copies of the petition and proposed ordinance by initiative prior to seeking or obtaining signatures. Upon receipt of any such petitions or ordinances, the city clerk shall forward the same to the city attorney. Within 10 days of receipt of the petition and proposed ordinance by initiative, the city attorney shall determine and report to the city council whether the proposed ordinance by petition is subject to the initiative process, and, if so, shall formulate an initiative statement, as described in subsection (B)(2) of this section, and shall transmit the initiative statement to the city clerk, city council, city manager, and the petitioner.

B. Initiative Petition – Requirements – Form. All initiative petitions submitted to the city clerk for validation shall contain the following:

1. Title of the Proposed Ordinance. The petition shall indicate the title of the proposed ordinance. The title shall be subject to change by the city as provided in MCMC [1.22.050](#).
2. Initiative Statement. Every petition page shall contain an initiative statement, not exceeding 100 words, phrased in the form of a question that can be answered only with an affirmative or negative response. The initiative statement may be distinct from the petitioner's title of the measure, and shall express and give a true and impartial statement of the purpose of the measure. It shall not intentionally be an argument, nor likely to create prejudice, either for or against the measure.
3. Petition Page(s). An initiative petition may include any number of pages; provided, that each page shall contain the initiative statement defined in subsection (B)(2) of this section.
4. Summary. An initiative petition shall contain a concise summary, in the form of a statement or prayer, of the proposed ordinance, which summary shall be a true and impartial statement of the purpose of the measure.
5. A copy of the proposed ordinance shall be attached to the petition and shall be made available to every person signing a petition.
6. Signature Lines. Every petition page shall contain consecutively numbered lines for signatures and shall include space for the printed name of the person signing, his or her address, and the date of signing. Signature lines shall be in substantially the following format:

Petitioner'sPetitioner'sHome

SignaturePrinted NameAddressDate

1. _____

Exhibit 3

2. _____

3. _____

7. Warning. Every petition page shall contain the following warning directly above the signature lines:

WARNING

Any person who signs this petition with a name other than his/her true and legal name, or who knowingly signs more than one petition page, or who signs a petition when he/she is not a qualified elector of Mill Creek, or who signs a petition when he/she is otherwise not qualified to sign, or who otherwise makes herein any false statement, shall be guilty of a misdemeanor.

1.22.040 Initiative – Sufficiency of the petition – Determination.

A. Signatures. To be sufficient, an initiative petition submitted for validation must contain valid signatures of not less than 15 percent of the number of persons registered to vote at the last preceding general city election.

B. Determination of Sufficiency. Within 10 days from the filing of the petition for validation, the city clerk shall determine the sufficiency of the signatures and shall either accept the petition or reject the petition for insufficiency and issue a certificate of insufficiency. Insufficient petitions may be amended and resubmitted once, and shall be re-evaluated in accordance with this chapter. For the purposes of this section, the city clerk shall use the registration records and returns of the preceding general city election.

C. Basis for Determination of Sufficiency. The following bases shall apply to determinations of sufficiency:

1. Signatures of not less than 15 percent of the number of persons registered to vote in the last, preceding general city election.
2. Variations in signatures between the petition and the voter's permanent registration caused by a substitution of initials instead of the voter's first or middle name, or both, shall not invalidate the signature if it is otherwise valid.
3. Signatures, excluding the original, of any person who has signed a petition two or more times shall be stricken.
4. Signatures shall also include the printed name of the person signing, his or her address, and the date signed.

1.22.050 Initiative – City council action – Calling election.

A. If the petition accompanying the proposed ordinance is determined to be sufficient by the city clerk, and if it contains a request that unless passed by the city council the ordinance by initiative petition be submitted to a vote of the people, the city council shall either:

1. Pass the proposed ordinance without alteration within 20 days after the city clerk's certification that the number of signatures on the petition is sufficient; or
2. Reject the proposed ordinance. The city council may, after rejection of any initiative measure,

Exhibit 3

propose and pass an alternative ordinance dealing with the same subject; provided, that if the city council rejects any initiative measure, or fails to pass an initiative measure without alteration within 20 days of certification of sufficiency, or passes a different measure dealing with the same subject, then the initiative measure without alteration and the council's alternative measure, if any, shall be submitted to the qualified electors of the city for approval or rejection.

B. If the initiative and/or any alternative council measure are to be submitted to the voters, the city council shall call a special election to be held no less than 30 days nor more than 60 days after the certification of sufficiency; provided, that if a general election shall occur within 90 days of the certification of sufficiency, then a special election need not be called, and the initiative shall be submitted to the voters at the general election.

C. Any number of initiatives may be voted upon at the same election; provided, that there shall not be more than one special election called for the purpose of initiatives during any one six-month period.

1.22.060 Initiative – Ballot title – Ballot statement.

A. When any initiative petition is determined to be sufficient by the city clerk and is to be submitted to the voters, the city clerk shall forward the initiative statement and summary, as defined in MCMC

[1.22.030](#)(B), to the city attorney.

B. The city attorney, within 10 days of receipt of the initiative statement and summary:

1. Shall prepare a ballot title, not to exceed 10 words, to permit the voters readily to identify the proposition and distinguish it from other propositions on the ballot.
2. Shall prepare a ballot statement, not to exceed 100 words, containing the essential features of the initiative as expressed in the initiative statement and summary. The ballot statement shall accompany the ballot title on the ballot.

1.22.070 Initiative – Notice of election.

The city clerk shall publish, in a newspaper of general circulation in the city, the text, ballot title, and ballot statement of any ordinance or proposition by initiative no less than five nor more than 20 days prior to the election. This publication shall be in addition to the notice required in Chapter 29.27 RCW.

1.22.080 Initiative – Conduct of election.

A. Publication of notice, the election, the canvass of returns, and the declaration of the results shall be conducted in the same manner as are other city elections.

B. The ballots used for voting on initiatives shall be substantially the same as those used at general city elections and shall contain the words "For the Ordinance" and "Against the Ordinance" to indicate voting choices.

1.22.090 Initiative – Effective date – Recording.

A. If a majority of the number of votes cast in an election on an initiative favor the initiative, it shall become effective and shall be made a part of the record of ordinances of the city.

B. In case the city council, after rejection of the initiative measure, has passed an alternative measure,

Exhibit 3.
the alternative measure shall be submitted at the same election with the initiative measure and shall be subject to the same notice, publication and voting requirements as the initiative measure. If both the initiative and the council's alternative measure are approved by a majority vote, and if they are conflicting in any particular, then the measure receiving the highest number of affirmative votes shall thereby be adopted, and the other shall be considered rejected.

1.22.100 Initiative – Appeal to court.

If the city clerk finds the initiative petition insufficient or if the city council refuses either to pass an initiative ordinance or to order an election thereon, any taxpayer may commence an action in the superior court against the city and procure a decree ordering an election to be held in the city for the purpose of voting upon the proposed ordinance if the court finds the petition to be sufficient. Such action shall be filed with the court within 10 days of the refusal or finding of insufficiency.

1.22.110 Initiative – Repeal or amendment.

A. Upon the adoption of an ordinance by initiative, the city clerk shall write on the margin of the record thereof "Ordinance by Petition No. _____" or "Ordinance by Vote of the People." No ordinance initiated by petition and approved by a majority of the electors voting thereon shall be amended or repealed by the city council until after a period of two years following such approval.

B. The city council may at any time, by ordinance, submit to a vote of the people at any general election a proposition for the repeal or amendment of an ordinance initiated by a petition. If a majority of the votes cast upon the proposition favor it, the ordinance by petition shall be repealed or amended accordingly. Propositions for repeal or amendment of an ordinance by petition shall meet the notice, publication and voting requirement of initiatives.

C. Upon the adoption of a proposition to repeal or amend an ordinance by petition, the city clerk shall write upon the margin of the record of the ordinance "Repealed (or Amended) by Ordinance No. _____" or "Repealed (or Amended) by Vote of the People."

1.22.120 Referendum – Procedures.

A. A petition for referendum may be timely filed with the city clerk within 30 days from the passage of an ordinance by the city council, petitioning the council to reconsider an ordinance which is subject to referendum, or to submit the same to a vote of the people for their approval.

B. Referendum Petition – Requirements – Form. All referendum petitions submitted to the city clerk for validation shall contain the following:

1. Referendum Statement. The petition for referendum shall contain a referendum statement that shall be phrased substantially in the following language:

Should City of Mill Creek Ordinance No. _____ relating to _____, enacted by the Mill Creek City Council on _____, be repealed in its entirety? Your signature on this petition indicates your vote in favor of repeal of the attached ordinance in its entirety.

2. A copy of the challenged ordinance shall be attached to each referendum petition for the information of the parties requested to sign such petition and shall be made available to every person signing a petition.

Exhibit 3

3. Petition Pages. A referendum petition may contain any number of pages; provided, that each page contains the referendum statement described in subsection (B)(1) of this section.

4. Signature Lines. Every petition page shall contain consecutively numbered lines for signatures, and shall include space for the printed name of the person signing, his or her address and the date of signing. Signature lines shall be in substantially the following format:

Petitioner'sPetitioner'sHome

SignaturePrinted NameAddressDate

- 1. _____
- 2. _____
- 3. _____

5. Warning. Every petition page shall contain the following warning directly above the signature lines:

WARNING

Any person who signs this petition with a name other than his/her true and legal name, or who knowingly signs more than one petition page, or who signs a petition when he/she is not a qualified elector of Mill Creek, or who signs a petition when he/she is otherwise not qualified to sign, or who otherwise makes herein any false statement, shall be guilty of a misdemeanor.

1.22.130 Referendum – Filing suspends ordinance – City council action.

Upon the filing of a referendum petition within 30 days of the passage of the challenged ordinance, which petition is determined to be sufficient by the city clerk, the city council shall reconsider the challenged ordinance and upon reconsideration shall defeat it in its entirety or shall submit it to a vote of the people. The operation of an ordinance challenged by referendum shall be suspended from the time a referendum petition is submitted for validation until the referendum petition is finally found insufficient or until the ordinance challenged has received a majority of the votes cast thereon at the election held for the purposes of the referendum.

1.22.140 Referendum – Effective date – Record.

If a majority of the number of votes cast thereon oppose the ordinance subject to the referendum, such ordinance shall be deemed repealed immediately.

1.22.150 Referendum – Other initiative provisions to apply.

The following provisions of this chapter relating to initiatives shall also apply to every referendum:

- A. Sufficiency of the petition (MCMC [1.22.040](#)).
- B. Ballot title and ballot statement (MCMC [1.22.060](#)).
- C. Notice of election (MCMC [1.22.070](#)).
- D. Conduct of election (MCMC [1.22.080](#)).

Exhibit 3

E. Appeal to court (MCMC [1.22.100](#)).

1.22.160 Restriction or abandonment of powers.

The exercise of the initiative and referendum powers governed by this chapter may be restricted or abandoned upon passage of a resolution by the city council declaring the council's intent to put a vote to the people calling for restriction or abandonment of the initiative and referendum powers, or by the filing of a petition meeting the sufficiency requirements of MCMC [1.22.040](#), and seeking the abandonment or restriction of the initiative and referendum powers. The council resolution or the petition shall be submitted to the voters at the next general municipal election if one is to be held within 180 days from the date of filing of the petition or passage of the resolution, or at a special election to be called for that purpose not less than 90 days nor more than 180 days after the passage of the resolution or the certification of sufficiency of the petition. The ballot title and ballot statement of the proposition shall be prepared by the city attorney as provided in MCMC [1.22.060](#).

1.22.170 Ordinances restricting or abandoning powers – Effective date.

If a majority of votes cast at the election favor restriction or abandonment, such powers of initiative or referendum shall be deemed so restricted or abandoned.

The Mill Creek Municipal Code is current through Ordinance 2014-784, passed September 9, 2014.

Disclaimer: The City Clerk's Office has the official version of the Mill Creek Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

Exhibit 3

Exhibit 4

Chapter 1.16 INITIATIVE AND REFERENDUM

1.16.000 Chapter Contents

Sections:

[1.16.010](#) Retention of powers--Statutory provisions.

1.16.010 Retention of powers--Statutory provisions

A. The city council elects to retain the powers of initiative and referendum for the qualified electors of the city for purposes of RCW [35A.11.080](#) .

B. The powers of initiative and referendum shall, when exercised, be done so in the manner set forth for the commission form of government in RCW [35.17.240](#)  through [35.17.360](#) .

(Ord. 6886 §1, 2013; Ord. 4092 §§1, 2, 1978).

The Olympia Municipal Code is current through Ordinance 6961, passed May 26, 2015.

Disclaimer: The City Clerk's Office has the official version of the Olympia Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

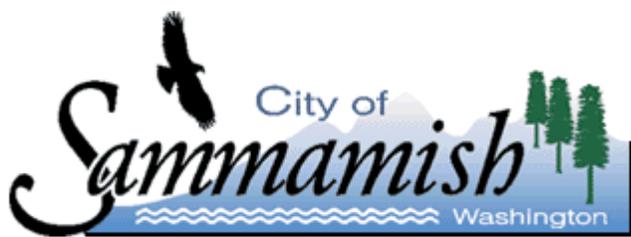
Olympia's Codification Process (<http://olympiawa.gov/city-government/codes-plans-and-standards/municipal-code.aspx>)

Municipal Code contact information:

Email: admins@ci.olympia.wa.us
(<mailto:admins@ci.olympia.wa.us>)
Telephone: (360) 753-8325

City Website: <http://olympiawa.gov>
(<http://olympiawa.gov>)
Code Publishing Company
(<http://www.codepublishing.com/>)

Exhibit 4



801 – 228th Avenue SE • Sammamish, WA 98075 • Phone: 425-295-0500 • Fax: 425-295-0600 • web: www.sammamish.us

Date: June 11, 2015

To: City Council

From: Jeff Thomas, Community Development Director

Re: **Erosion Hazard Near Sensitive Water Bodies (EHNSWB) and Wetland Management Areas (WMA)**

QUESTIONS & ANSWERS

Introduction

The following questions and answers were compiled based on numerous inquiries from City Council members over the course of the last two weeks regarding Erosion Hazard Near Sensitive Water Bodies (EHNSWB) and Wetland Management Areas (WMA), aka, SO 180 and SO 190. Staff would like to inform the entire council of the responses to these inquiries via this Q/A. Please see the questions and answers below.

1. Q: What is the EHNSWB?

A: The EHNSWB overlay identifies areas on the western facing slopes of the Sammamish Plateau where there is increased risk of development related erosion that would directly impact the water quality in high value streams or Lake Sammamish. The EHNSWB overlay is based upon the technical findings and policy recommendations contained 1994 East Sammamish Basin and Nonpoint Action Plan by King County. Originally King County adopted “special district overlays” to implement the policy recommendations of the East Sammamish Basin and Nonpoint Action Plan; in particular Special District Overlay 190 or “SO-190” was adopted to implement the protections now contained in the EHNSWB overlay.

Following the City’s incorporation the SO-190 regulations were adopted by the City Council into the Interim Sammamish Development Code and ultimately the Sammamish Municipal Code. In 2005, the City adopted environmentally critical area regulations consistent with the Growth Management Act, which incorporated the former SO-190 regulations into the EHNSWB overlay. Generally, the City has not modified the regulations implementing the water quality protections contained within the EHNSWB overlay, except to provide for very limited exemptions and most recently, the City Council has added a pilot program to the EHNSWB overlay, which allows limited subdivision where it was previously prohibited.

The EHNSWB overlay contains two areas that are regulated for the purposes of protecting water quality – the “no-disturbance area” and the properties within the overlay that drain to the no-disturbance area. . The department of community development maintains a map of the boundaries of the erosion hazard near sensitive water bodies overlay, however the location of the no-disturbance area and the properties that drain to the no-disturbance area are field verified. The upslope boundary of the no-disturbance area lies at the first obvious break in slope from the upland plateau **over onto the valley walls**. The downslope boundary of the no-disturbance area is the extent of those areas designated as erosion or landslide hazard areas. The regulations relating to the overlays are contained in the Sammamish Municipal Code, Chapter 21A.50.

2. Q: What is the WMA?

A: The WMA overlay identifies unique and outstanding wetlands that receive increased protection from the impacts created from geographic and hydrologic isolation, and impervious surface. The WMA overlay is based upon the technical findings and policy recommendations contained 1994 East Sammamish Basin and Nonpoint Action Plan by King County. Originally King County adopted “special district overlays” to implement the policy recommendations of the East Sammamish Basin and Nonpoint Action Plan; in particular Special District Overlay 180 or “SO-180” was adopted to implement the protections now contained in the WMA overlay. Following the City’s incorporation the SO-180 regulations were adopted by the City Council into the Interim Sammamish Development Code and ultimately the Sammamish Municipal Code. In 2005, the City adopted environmentally critical area regulations consistent with the Growth Management Act, which incorporated the former SO-180 regulations into the WMA overlay.

The WMA mapping was originally prepared by King County in the East Sammamish Basin and Nonpoint Action Plan, and identified areas where increased protections, such as limitations on impervious surface and tree retention or replacement, were necessary to protect the high value wetland resources. The Department of Community Development maintains a map of the boundaries of the wetland management area overlay, however the application of many of the specific protection measures is based upon the original mapping completed in the East Sammamish Basin and Nonpoint Action Plan. The application of some protections, including limits on impervious surface, were expanded in the 2005 environmentally critical areas update to include all R-1 zoned properties located within an WMA overlay.

3. Q: Is the EHNSWB overlay the same thing as SO-190 and is the WMA overlay the same thing as the SO-180?

A: Yes, SO-190 and SO-180 are the old King County terms which have been re-named by the City of Sammamish. The content of the regulations are substantively the same as they were when adopted originally by King County.

4. Q: Are the EHNSWB and WMA overlays defined as environmentally critical areas?

A: The EHNSWB and WMA overlay are not defined as an environmentally critical area. However the two overlays are regulated by SMC 21A.50; the city's critical areas regulation and regulated the negative effects of development that impacts environmentally critical areas. For example, the EHSNWB overlay regulates geo-hazards (i.e. erosion and landslide hazard areas) where development may impact the water quality of Lake Sammamish or high resource streams. Similarly, the WMA overlay protects high value wetlands from development impacts. In addition, both overlays add extra development regulations that are intended to provide increased protection in addition to the protection resulting with wetland, erosion hazards, landslide hazards and stream protection standards.

5. Q: What are defined as environmentally critical areas in the city?

A: The city code defines the following as critical areas: erosion hazard areas, frequently flooded areas, landslide hazard areas, seismic hazard areas, critical aquifer recharge areas, wetlands, streams, and fish and wildlife habitat conservation areas. (Ord. O2013-350 § 1 (Att. A); Ord. O2005-193 § 2)

6. Q: Do we have adequate draft environmental policies that support the continued identification and protection of the EHNSWB and WMA overlays?

A: Yes, the following policy requires that the city identify these areas. Since incorporation the City has had these areas identified on maps. The boundaries of each overlay were identified by King County. The City currently maintains the locations.

Our revised version of the Environment Element has a draft policy that identifies the Wetland Management Area overlay and Erosion Hazard near Sensitive Water Body overlay, see below:

Policy EC.1.3 ~~The City should~~ Consider identifying identify and protecting the following special areas where appropriate:

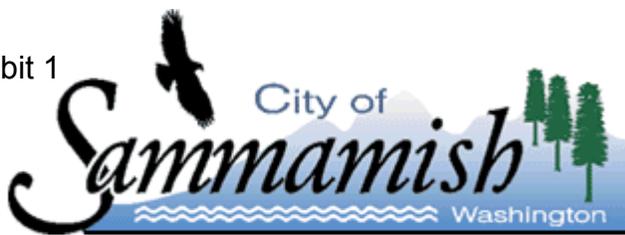
- a. Natural areas including significant trees,

- b. Scenic areas such as designated view corridors,
- c. Natural drainage areas, including the ~~SO 180 and SO 190~~ Erosion Hazard Near Sensitive Water Bodies and Wetland Management Areas designated locations and the those areas draining to Erosion Hazard Near Sensitive Water Bodies and Wetland Management Areas.
- d. Urban landscaped areas such as public or private golf courses and parks,
- e. Land preserved as open space or buffers tracts as part of development, including parcels subject to density averaging,
- f. Lands designated as open space under the Current Use taxation-open space established according to King County for tax assessment purposes, where appropriate.

7. Q: Where can the public can access the maps associated with both overlays?

A: The public can see the WMA and the EHNSWB on the city webpage;

The EHNSWB is also available on NWmaps.net under the geology layer. Both overlays are available under on the city webpage, Maps and GIS Data, Both maps are also available in hard copy at the City Hall front counter.



801 – 228th Avenue SE • Sammamish, WA 98075 • Phone: 425-295-0500 • Fax: 425-295-0600 • web: www.sammamish.us

Date: June 11th 2015

To: City Council

From: Jeff Thomas, Community Development Director

Re: Questions and Answers to Environmental Element from Council Member Whitten

Introduction

The below is an email submitted by Council Member Whitten with questions and suggested changes to the Draft Environmental Element. Below each number is a Staff Response for the benefit of the entire council. From a procedural perspective, the comments on policies 4.9, 4.14, and 9.6 (note that this policy is now 10.6) asks for changes to language that individual council members specifically requested previous study sessions and council meetings. All the suggested changes will need to be reviewed by the council during your upcoming meeting on June 15th. At that time you may direct Staff as to which changes you would like to include in the proposed amended version of the Environmental Element.

Requested Revisions to Environmental and Land Use elements based on I. Stahl's comments attached to her email of 6/4/15 and a couple of additional concerns I have.

Additional comments of NSW

1. I have tried to bold those provisions below where I have asked staff to recommend language, etc.
2. I believe we need to bring into the technical appendices of the proposed Comp Plan vol. 2 all of the existing technical reports, etc. in the existing comp plan supportive of the existing plan goals and policies not set out in the new draft and which we are carrying over to the new draft and **I ask for staff's recommendations on this.**

Staff Response: All of the existing appendices from the Environmental Element were moved into Vol. 2 and/or are still being used, including Sub-Basin, Wetland and Stream Classification and Salmonid Distribution, Aquifer Susceptibility, SPWSD Wellhead Protection Area, Earthquake Hazards, SO Overlays, 1993 East Lake Sammamish Community Plan, Historic Preservation. KC Wetland Inventory was replaced with Sammamish Inventory for wetlands as the Sammamish Data is more current.

3. Open space as a mitigation measure like trees needs to be discussed in the environmental element preferably as a separate independent topic (goal with accompanying policies) for mitigating in general the impacts of development, not just limited to one context (e.g. wetlands) or another. It has not only recreational, esthetic and quality of life benefits but also is a mitigating measure to development beneficial to lakes, streams, wetlands, erosion and other natural hazard areas, etc.

Exhibit 1

We need to make sure the open space policies are broadly stated as being potentially applicable in all of these contexts not just in one, e.g. wetlands. E.g., the option for the city to own open space parcels v. HOA. **I would ask staff to draft a separate goal and policies on open space in the environmental element.**

Staff Response: Proposed policy, Encourage the retention of open space and areas of natural vegetation to mitigate harmful impacts of development on the city's lakes, streams, wetlands, erosion and other natural hazard areas.

Per Ilene Stahl's 64 comments I request:

E.C. 2.4 Development in the natural hazards) Please eliminate the words "while allowing reasonable use."

Staff Response: Policy EC.2.4 ~~Manage development in~~ Avoid impacts from new development with erosion and landslide hazard areas ~~to minimize erosion while allowing~~ subject to reasonable use provisions in the Sammamish development code.

E.C. 3.20 (Open space mitigation for wetlands) Please make express the option to have the open space parcel owned by the city not just by the HOA. Please add a provision applicable in a broader separate open space context not just in the wetland context to the effect that "the open space parcel shall be located where it will have the maximum environmental benefit to mitigate the detrimental impacts of development to sensitive areas and lakes with a preference the open space parcel be located between the development and adjacent to the critical area, when practicable.

Staff Response: EC 3.20 relabeled now as EC 3.19 Preserve in perpetuity land used for wetland mitigation. The project proponent shall provide monitoring and maintenance in conformance with the City standards until the success of the site is established. Consider the use of open space tracts to further mitigate the detrimental impacts of development to critical areas and lakes. Encourage open space to be located where it will have the maximum environmental benefit such as between the development and adjacent to the critical area, when practicable.

E.C. 4.9 (Wildlife) Please eliminate the words "and sensible."

Staff Response: Seek to preserve and, where feasible ~~and sensible~~, restore diversity of fish, wildlife including birds and butterfly species and habitats in the City.

E.C. 4.13 (Wildlife) As revised it makes no sense. It needs to specifically reference the concept of protecting wildlife and its need to be able to travel thru and to connected natural areas and habitat. I would reword something along the lines of "Natural areas and their connectivity potentially used by wildlife should be protected from the impacts of development." **Staff, please provide some language.**

Staff Response: Protect natural areas and their connectivity potentially used by wildlife from the impacts of development. Consider impacts of public and private projects on wildlife corridor greenbelts and connectivity.

Exhibit 1

E.C. 5.13 (Rivers, Lakes and Streams) I agree with Ilene's comments. We need strong language, use the language "Protect our lakes", and not some watered down politically correct version.

Staff Response: ~~Lakes should be protected~~ Seek to Protect our lakes through management of lake watersheds and shorelines. Lakes sensitive to nutrients shall be protected through the management of nutrients that stimulate algae blooms and aquatic plant growth. Measurable standards for lake quality should be set and management plans established to meet the standards. ~~Formation of lake management districts or other financing mechanisms should be considered to provide the financial resources necessary to support actions for protection of sensitive lakes.~~

E.C. 5.14 (Rivers, Lakes and Streams) Ilene, is right on. We should have separate and very strong goal and policies for protection of our salmon and salmon related bearing streams. And I believe the revised RCW for GMA even has separate provision calling out for special protection of our androgynous fish population. **Staff, please provide some new language for a separate goal and policies.**

Staff Response: Give special consideration for to conservation or protection measures necessary to preserve or enhance anadromous fisheries, including the use of best available science and the adoption of development regulations that protect the functions and values of critical areas.

E.C. 9.6 (Trees) Please change the word "practices" back to "penalties."

Staff Response: Develop and enforce more effective regulatory penalties ~~practices~~ for unauthorized tree-removal and alteration of trees

E.C. 5.21 (Overlay Districts and Plans) Please see comments of Ilene Stahl per her 6/4/15 email and I would **request staff for recommended language** in that regard. I may be submitting additional comments myself.

Staff Response: The ~~SO-180~~ Wetland Management Area Special Overlay District and requirements, and the ~~SO-190~~, Erosion Hazards Near Sensitive Water Bodies—Special Overlay District and requirements, shall be reviewed for potential amendment and updated where appropriate to ensure protection of high function or high hazard areas.

