



State of Washington

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908
(360) 753-1111 • FAX (360) 753-1112

Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

November 20, 2020

Delivered electronically to Dawn Reitan, an attorney with Inslee Best on behalf of the City of Newcastle

Subject: Complaint filed against City of Newcastle Officials, PDC Case 78205

Ms. Reitan:

Below is a copy of an electronic letter sent to Robert Clark and Kandy Schendel concerning the two complaints they filed with the Public Disclosure Commission (PDC) against your client, Officials of the City of Newcastle.

As noted in the letter addressed to Robert Clark and Kandy Schendel, the PDC will not be conducting a more formal investigation into these allegations or taking any enforcement action concerning this matter.

The PDC has dismissed the complaint filed against officials of the City of Newcastle in accordance with RCW 42.17A.755(1). If you have questions, you may contact Kurt Young by e-mail at pdc@pdc.wa.gov.

Sincerely,

Endorsed by,

/s

Electronically Signed Kurt Young
Compliance Officer

/s

Electronically Signed BG Sandahl, Deputy Director
For Peter Lavalley, PDC Executive Director



Public Disclosure Commission
Shining Light on Washington Politics Since 1972



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November 20, 2020

Delivered electronically to Robert Clark and Kandy Schendel

Subject: Complaint regarding City of Newcastle Officials, PDC Case 78205

Ms. Schendel and Mr. Clark:

The Public Disclosure Commission (PDC) has completed its review of the complaints filed on October 5, 2020 by Mr. Clark, and on October 10, 2020 by Ms. Schendel. The complaints alleged that the City of Newcastle may have violated RCW 42.17A.555 by using city facilities to produce and distribute electronically and to post on the cities website two sets of Frequently Asked Questions (FAQ) in support of Referendum 2, a City of Newcastle ballot measure concerning utility taxes on the November 3, 2020 general election ballot.

PDC staff reviewed the allegations listed in the two complaints including the two FAQ's; the applicable statutes, rules and PDC Interpretation #04-02 Guidelines for Local Government Agencies in Election Campaigns; information on the City of Newcastle's website, and the October 20, 2020 response from Dawn Reitan, an attorney with Inslee Best on behalf of the City of Newcastle. Based on staff's review, we found the following:

- Pursuant to RCW 42.17A.555 no public facilities can be used by or authorized to be used directly or indirectly by any local elected or appointed official or public employee, to support or oppose any candidate or ballot proposition.
- WAC 390-05-271(2) states that "RCW 42.17A.555 does not prevent a public office or agency from... (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."
- As part of your complaints, you provided copies or referenced two FAQ versions of a similar factsheet produced and distributed by the City of Newcastle concerning Referendum 2, a local city ballot measure that is approved would impose a three percent utility tax on all residents and businesses.
- Staff reviewed the September 18, and October 1, 2020, versions of the FAQ which provided information concerning: (1) why the Newcastle City Council felt a three percent utility tax was needed at this time; (2) the cities revenue forecast projected future budget shortfalls; (3) that the City of Newcastle was one of only three municipalities in King County without a utility tax; (4) which at utilities would be subject to the utility tax and how the utility tax would be applied; and (5) the impacts of approving and rejecting the utility tax.

- The FAQ information discussed the city currently has three primary sources of revenue, property and sales taxes, and development fees, that the costs of city services, are rising especially for public safety like police and fire departments, and the existing revenues are not adequate to keep pace.
- The FAQ stated the three percent tax would apply to electricity and natural gas, water, sewer, garbage, cable TV and phone voice fees, and that the average household in the City of Newcastle would pay between \$8 to \$14 per month in utility fees. The information stated cable internet, stormwater, mobile phone text, data and non-voice fees were not subject to the utility tax, and that if Referendum 2 was approved, the utility tax was estimated to generate approximately \$880,000 in revenue annually, to pay for fire and police services and the projected costs increases for those contracted services in the future. The FAQ stated if Referendum 2 was rejected, *“it is projected that the City will have an approximately \$1 million shortfall in the 2021 budget alone and will need to consider cutting public safety (police and fire) and other services.”*
- Ms. Reitan stated in her response that *“Consistent with the City’s Public Engagement Strategy, and customary practice of posting community news items, the City published the FAQ to inform its residents of an upcoming issue on the ballot, Referendum 2.”* She stated that in 2019, the Newcastle City Council determined the city should be communicating with as many citizens as possible and acknowledging that it is *“vital for individuals to have a voice in the decisions that affect them.”* The resolution noted that the City of Newcastle’s only local newspaper went out of business in calendar year 2016 and that the City can provide citizens with more information about the Newcastle government and the services it provides through outreach efforts.
- The resolution discussed *“facilitating participation in government”* as one of the city’s core responsibilities, and that strategy included frequent communications with residents. The communications are meant to ensure that City of Newcastle’s policies, initiatives, issues, budgetary decisions and projects are part of the regular *“public outreach so that citizens are included, heard and informed”* and to *“keep stakeholders in the loop with consistent updates on City events and news.”*
- Ms. Reitan stated that the complainants did not discuss the "normal and regular" exemption found in the statute RCW 42.17A.555, the PDC rules and interpretation which provides the City of Newcastle with the authority to post the FAQ information about Referendum 2. She noted that none of the complaints addressed the City of Newcastle’s “routine and customary practice of posting news on its website, in social media or newsletters to inform the public of important policy issues.”
- Ms. Reitan included Attachment 6 to the response letter which listed the city’s “News Items Dealing with Utility Tax, Budget or Fiscal Sustainability” that included information dating back to March 20, 2018 to present. She responded to your allegations stating that the City of Newcastle was not required to provide information in the FAQ about other financial alternatives to the utility tax, as noted by the complainants who were opposed to the utility taxes, and who “preferred alternatives to addressing fiscal sustainability.”
- Ms. Rietan stated that the FAQ provided fair and objective information to citizens about the City of Newcastle proposed utility taxes, that the information was consistent with the Ordinance findings the Fiscal Sustainability Plan, and the 2020 budget adopted by the City Council which forecasted deficit spending. The FAQ provided information related to the potential impacts to the City of Newcastle operations if the Ordinance is approved or rejected under the Referendum.

- Ms. Rietan added that the information included in the FAQ was consistent with PDC Guidelines found in PDC Interpretation #04-02, and the information distributed informed residents of the City of Newcastle public safety needs and costs.

Staff found that the content of the two versions of the Frequently Asked Questions (FAQ) concerning the City of Newcastle's Referendum 2, to be a fair and objective presentation of the facts. The FAQ was part of the cities normal and regular conduct for communicating information about the maintenance and operations of the city to its residents, and the two versions of the FAQ were produced and distributed in accordance with PDC Interpretation #04-02 Guidelines for Local Government Agencies in Election Campaigns.

Based on these findings, PDC staff found no evidence of a violation that would require conducting a more formal investigation into the complaint or pursuing enforcement action in this instance. The PDC has dismissed this matter in accordance with RCW 42.17A.755(1). If you have questions, you may contact Kurt Young by e-mail at pdc@pdc.wa.gov.

Sincerely,

Endorsed by,

/s
Electronically Signed Kurt Young
Compliance Officer

/s
Electronically Signed BG Sandahl, Deputy Director for
Peter Lavallee, PDC Executive Director

c: Dawn Reitan, legal counsel for the City of Newcastle

