City of Seattle
Ethics and Elections Commission

June 25, 2014

Re: Case No. 14-2-0527-1

Dear **********:

We received your May 27, 2014 letter alleging that the May edition of City Inside/Out: Council Edition promoted a ballot measure in violation of Seattle's Elections Code. While I agree that the program at issue did promote the creation of a Metropolitan Parks District (MPD), our investigation did not identify any person to charge with a material violation of the law. For the reasons that follow, I believe that the most appropriate way to resolve your complaint is with a request to the Commission for advice as to how the Seattle Channel can ensure that it's public affairs programming complies with the City's Election Code.

LAW

SMC 2.04.300 states that:

> No elected official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include but are not limited to use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the officer or agency; provided, that the foregoing provisions of this section shall not apply to the following activities:
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> A. Action taken at an open public meeting by the City Council to express a collective decision or to actually vote upon a motion, proposal, resolution, order or ordinance, or to support or oppose a ballot proposition so long as (1) any required notice of the meeting includes the title and number of the ballot proposition, and (2) members of the City Council or members of the public are afforded an approximate equal opportunity for the expression of an opposing view;

B. A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry; and

C. Activities that are part of the normal and regular conduct of the office or agency.

FACTS

On April 28, 2014, the City Council voted 8-0 to place a measure before voters asking whether or not they wanted to create an MPD.

In the first week of May, the Seattle Channel recorded the May edition of its public affairs show, City Inside/Out: Council Edition. Every month, the Seattle Channel brings together three councilmembers for a half-hour discussion of current issues in City government. The May show covered (i) the minimum wage debate, (ii) the search for a new police chief, (iii) the MPD, (iv) pending cuts to bus service, (v) the City's regulation of transportation networked companies, (vi) universal pre-school, (vii) a Second Avenue cycle track, and (viii) a program that helps low-income customers pay their utility bills, and (ix) public campaign financing.

Brian Callanan, the show's host under a contract with the City, began the eight-minute segment of the show that dealt with the MPD by reading an e-mail from someone supporting the measure and someone opposing the measure. He then asked Councilmember Bagshaw: "What is a Parks District, what do we get for what we're going to be paying for?" Following Councilmember Bagshaw's reply, Callanan asked Councilmember Sawant: "Do you think the governing body should be the Council…or should it be a separate Parks board…that might offer some more oversight?" Following Councilmember Sawant's reply, Callanan asked Councilmember Burgess "What do you want to say to people who are saying, 'Hey, we're getting a lot of taxes at once here?'" All three Councilmembers replied to Callanan's questions in ways that portrayed the ballot proposition in a very favorable light.

The Seattle Channel aired the show 27 times between May 13 and June 2 and maintains a link to the show on its website. There is no data available on how many times the show was viewed. As of June 6, the show had been accessed 153 times on the website.

ANALYSIS

I believe that a reasonable person viewing the eight-minute segment on the MPD would conclude that, viewed in its totality, the segment promoted the ballot proposition. While the host read two e-mails critical of the measure and asked probing questions, the replies offered by the Councilmembers took up most of the eight minutes of airtime and all promoted the measure. (To be sure, there were no express appeals for votes for the MPD.) Resolving your complaint, though, is complicated. Here's why:

1. The promotional remarks of the three elected officials all fit into the exception under SMC 2.04.300.B for "statement[s] by an elected official in support of or in opposition

to any ballot proposition…in response to a specific inquiry." All three were asked specific questions about the MPD, and all three answered those questions.

2. Brian Callanan's questions didn't promote the ballot measure. He counterbalanced the promotional comments of the elected officials with questions about governance and tax fatigue. And even if I assume *arguendo* that his questions did promote the ballot proposition, Callanan is a contractor – not an appointee or an employee – and therefore not subject to SMC 2.04.300.

3. That leaves the leadership of the Seattle Channel – General Manager John Giamberso – as the only other actor who could reasonably be charged with a violation of SMC 2.04.300. As the General Manager, Mr. Giamberso is ultimately responsible for what programming gets produced and posted. But I am not familiar with any case in which this agency has charged based on a "captain of the ship" theory when the captain did not stand to benefit in any way from the alleged violation. Charging someone with a misuse of City facilities should be reserved for instances when the person charged behaved inappropriately in some way.

I believe that the issue here is not with any individuals' behavior, but with the inherent tension between the two identities of the Seattle Channel: it is an Emmy-award winning creator of public affairs programming, but it is also a City agency, housed in the Executive Branch of City government.

If the show were on commercial television, it would not raise any issues at all. And keep in mind that while your complaint related to the MPD, six of the nine topics covered in the May City Inside/Out dealt with issues that were the subject of ballot measures or prospective ballot measures.

CONCLUSION

This case does not lend itself to the exercise of the Commission's enforcement powers. Instead, I am asking the Commission to provide binding advice on what, if anything, hosts or guests may say on the Seattle Channel about ballot propositions or candidacies without running afoul of the Elections Code's bar on using City facilities to promote or oppose ballot measures. After receiving clear guidance from the Commission, Seattle Channel personnel who are involved in producing and posting shows would be responsible for ensuring that programs aired and posted complied with the Elections Code.

I have advised the Seattle Channel to put a moratorium on discussions of the many state and local ballot propositions that will be on the ballot this year until the Commission can provide guidance on compliance with the Elections Code.

I thank you for bringing this issue to our attention.

Very truly yours,

Wayne Barnett
Executive Director

cc: John Giamberso, Seattle Channel General Manager
Councilmembers Sally Bagshaw, Tim Burgess, and Kshama Sawant