

## MEMORANDUM

April 23, 2019

TO: Ben Stuckart, City Council President  
Members of the City Council  
Terri Pfister, City Clerk  
Michael Cathcart, Initiative Sponsor

FROM: Brian T. McGinn, Hearing Examiner

SUBJECT: Initiative No. 2019-2

CC: Mayor David Condon  
Mike Piccolo, Assistant City Attorney

---

### Background

On March 12, 2019, Michael Cathcart, Better Spokane, filed a proposed initiative, now designated as Initiative No. 2019-2, to amend the Charter of the City of Spokane (the "Charter") to prohibit the City of Spokane from imposing an income tax on wages, salaries, investments, the sale of goods or services, or any other income source.

On April 9, 2019, the City Clerk referred Initiative No. 2019-2 to the Hearing Examiner for legal review.

On April 19, 2019, Mr. Cathcart submitted an amended initiative, which includes information about the signature-gathering firm. The substance of the initiative was not modified by the amendment.

On April 22, 2019, the City Clerk again referred Initiative No. 2019-2 to the Hearing Examiner for legal review.

In accordance with SMC 2.02.040, the Hearing Examiner is charged with preparing a formal written opinion as to the legal validity and effect of the proposed measure. This memorandum is intended to fulfill this responsibility.

### Summary of Initiative 2019-2

Initiative 2019-2 proposes to add Section 21.6, entitled "Prohibition of City Income Tax," to Article III of the Charter. See Section 1. The proposed amendment declares that the City of Spokane may not impose an income tax on wages, salaries, investments, the sale of goods or services, or any other source of income. See *id.*

The initiative includes a severability provision, which states that if any provision of the Charter amendment or its application to any persons or circumstances is determined to be invalid, the remainder shall continue unaffected. See Section 2.

The initiative concludes with provisions that require the matter to be submitted to the voters in accordance with the Charter, and setting forth the effective date of the measure. See Sections 3 & 4.

### **Initiative Law**

The people of Spokane have the right to legislate directly, through the initiative process. See Spokane City Charter, Article IX, Section 81. The people's legislative authority is necessarily broad and includes the power to make and enforce any law or regulation in furtherance of the public health, safety, and welfare. See e.g. Const. art. 11, § 11 (conferring on cities the power to enact regulations not in conflict with general laws of the state). Although the power to legislate by initiative is far-reaching, there are limitations on the scope of that authority.

Initiatives cannot exceed the jurisdictional limits of the enacting body or transgress constitutional directives. See *City of Burien v. KIGA*, 144 Wn.2d 819, 824 (2001) (stating that the initiative power "is subject to the same constitutional restraints placed upon the Legislature when making laws."). In addition, Washington courts have described several specific limitations on initiative powers. Those limitations include the following:

- 1) An initiative may not include more than one subject matter. *City of Burien v. KIGA*, 144 Wn.2d 819, 824-25 (2001).
- 2) The power of initiative only extends to matters that are legislative in nature. *Ruano v. Spellman*, 81 Wn.2d 820, 823, 505 P.2d 447 (1973). Administrative matters are not subject to initiative. *Port Angeles v. Our Water-Our Choice*, 170 Wn.2d 1, 8, 239 P.3d 589 (2010).
- 3) An initiative cannot interfere with the exercise of a power delegated by state law to the governing legislative body of a city. *City of Sequim v. Malkasian*, 157 Wash.2d 251, 264, 138 P.3d 943 (2006).

In the Hearing Examiner's opinion, Initiative 2019-2 satisfies the threshold questions under Washington's law on initiatives. The proposed measure concerns a single subject matter, i.e. precluding the enactment of a local income tax. The proposed measure does not include other, unrelated subjects. The proposal is legislative, rather than administrative, because it seeks to adopt a new tax policy. To the Hearing Examiner's knowledge, there is no state law delegating control over the process of adopting a local income tax to the governing body of a city. Thus, the power to modify tax policy through an initiative has not been cut off by the specific delegation of such authority to the city council or any other legislative body. The people have broad authority to enact legislation in furtherance of the public health, safety, and welfare through the initiative process. That power is broad enough to encompass a Charter amendment precluding a local income tax.

## Analysis of Initiative 2019-2

The proposed initiative, if enacted, would add a new provision to the Charter prohibiting the City of Spokane from enacting a local income tax. The authority of the people to engage in direct legislation is very broad and certainly includes the right to create or change tax policies. If there is any legal question that arises with respect to the proposed measure, it is whether the initiative somehow infringes upon the city government's authority to adopt a local income tax. The Hearing Examiner concludes that the city government currently does not have the authority to adopt a local income tax, either under the state constitution or pursuant to state statute. Thus, the proposed initiative does not impinge upon any existing authority vested in city government.

The Washington State Constitution generally vests the taxing power in the state legislature. See *Watson v. City of Seattle*, 189 Wn2d 149, 165, 401 P.3d 1 (2017). Municipal corporations have no inherent power to tax. See *id.* In order to have the power to levy taxes, municipalities must have express authority, either constitutional or legislative. See *King County v. City of Algona*, 101 Wn.2d 789, 791, 681 P.2d 1281 (1984).

The Washington State Constitution does not directly grant municipalities the power to tax. Rather, the constitution provides that the municipalities *may* be authorized to levy taxes, if that authority is specifically granted to them by the state legislature. For example, Article XI, Section 12 of the Washington State Constitution provides, in pertinent part:

*The legislature...**may**, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.*

See Wash. Const. art IX, § 12 (emphasis added). Similarly, Article VII, Section 9 of the Washington State Constitution state, in relevant part:

*For all corporate purposes, all municipal corporations **may** be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.*

See Wash. Const. art VII, § 9 (emphasis added). The foregoing constitutional provisions are not self-executing. As state above, the taxing power cannot be exercised by local government unless and until the authority to do so is affirmatively delegated by the state government.

The state legislature has not granted the city the power to adopt a local income tax. On the contrary, in 1984, the state legislature prohibited cities and counties from adopting this type of tax. That statute is straightforward:

*A county, city, or city-county shall not levy a tax on net income.*

See RCW 36.65.030. The term "net income" is not defined, and one could debate the precise meaning of that language. However, it is clear enough that the statute precludes the local adoption of an income tax. Devising a precise definition of "net income" is not

necessary to the analysis here. In the Hearing Examiner's view, the proposed initiative is consistent with the state statute. If anything, the measure incorporates the statutory prohibition of a local income tax into the Charter.

### **Conclusion**

This memorandum serves as the Hearing Examiner's written, legal opinion on the legal validity and effect of proposed Initiative 2019-2. In the Hearing Examiner's opinion, the proposed measure is the proper subject of an initiative. The proposal does not run afoul of any of the threshold questions under Washington's initiative law. Absent some specific legal limitation, direct legislation may be utilized to adopt any law in furtherance of the public health, safety, and welfare. Thus, the initiative process may be used to adopt new tax policy, including by Charter amendment. Finally, the proposed measure does not undermine or infringe upon any exclusive authority vested in city government.

The Hearing Examiner concludes that Initiative 2019-2 is legally valid and effective, for the reasons discussed in this memorandum. The Hearing Examiner expresses no opinion on whether Initiative 2019-2 *should* be adopted or not. That is a policy question that is beyond the scope of this memorandum.

DATED this 23<sup>rd</sup> day of April 2019.



---

Brian T. McGinn  
City of Spokane Hearing Examiner