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February 20, 2015

Seattle City Council
600 – 4th Avenue, 2nd Floor
P.O. Box 34025
Seattle, WA 98124-4025

RE: Resolution 31565/Council Bill 118302 --- A Resolution
And an Ordinance to initiate a new University District
Parking and Business Improvement Area

Honorable Members:

The City Council should reject the proposal by Resolution 31565 and Council Bill 118302 to establish a University District Parking and Business Improvement Area, because:

I) Resolution 31565 in Section 5 D (CB 118302, Section 6 D) exempts properties owned by the City and Sound Transit and thereby violates RCW 43.09.210.

II) The purposes exceed the statutory authorization in RCW 35.87A.010 and thereby violate RCW 35.87A.120. Section 3 of Resolution 31565 B. (Section 5 B of CB 118302) lists “Policy and *advocacy*” (emphasis supplied). “Advocacy” in the context of “policy” connotes lobbying. In addition, following paragraph declares that the listing of services for which PBIA money may be spent “is illustrative and not exclusive.”

III) Resolution 31565 and CB 118302 suffer from multiple structural defects: RCW 35.87A.010 (2) authorizes assessments upon “businesses” and “multifamily residential or mixed use projects.” (called “Projects” herein). The proposed ordinance levies the charges upon “the *owners of business property, multi-family residential property ... and mixed use property.*” (Resolution 31565, Section 5; CB 118302, Section 6) The levy is therefore made upon the owner of the land rather than the business enterprise or Projects as required by RCW Chapter 35.87A. It is an important difference.

The assessments fail to correlate with the alleged benefits to be conferred.

The assessments lack ratability.

IV) CB 118302 makes an array of bad policy choices, e.g. it fails to provide transparency and accountability in the advisory board and manager; delegates too much authority to the advisory board and vests too little with the ratepayers ; revenues due the sub-fund are not specified for deposit; the dispute resolution process is too limited; it uses undefined terms to base payments required of rate payers; and the map attached as Exhibit “A” does not coincide with the boundary description etc.

V) By using the resolution alternative, the City is flouting the will of the majority of the ratepayers and imposing a special tax on its own authority. RCW 35.87A.010 (2) and RCW 35.87.030 set forth a threshold for an initiating petition of sixty percent and fifty percent of the persons who operate businesses and Projects respectively. To reach either threshold, the City counts the contribution of the University of Washington (called "UW") that amounts to 46% of the gross revenue. The UW contribution may not be validly counted under the statutory formula of either RCW 35.87A.030 or .010. If the UW contribution is excluded, the signers and supporters of the petition pay assessments equal to only 21% of the gross revenue and between 38 to 39% of the assessments under the statutory formula,. That is well short of 50%.

II. RCW 43.09.210

Resolution 31565 in Section 5 D (CB 118302) exempts properties owned by the City and Sound Transit and thereby violates RCW 43.09.210. Next to the UW, the City is the largest land owner in the University District.

The City of Seattle owns several parks in the "area base" of the assessment district ("U District Fund Area", Resolution 31565, Section 2 A; CB 118302, Section 4):
Christie park,
Sakuma viewpoint,
University Playfield

The south half of Ravenna Boulevard; and
the sites of two parks being developed at;

Half of the former south parking lot of the University Heights Center for the
Community and

The former site of the Bryant-Marina/Campus Police station on the UW Campus. Resolution 31565, Section 2 (CB 118302, Section 4) encloses two of them within cleaning area overlays. The park at University Heights Center will be in the "South Ave. Cleaning Area" and the south half of Ravenna Boulevard will be in the "North Ave. Cleaning Area.". The Andy Shiga community garden at about 5516 University Way N.E. will be in the North Ave Cleaning area from May 1, 2015 until it is closed at the end of the harvest season.

In addition, the City owns in the base area:

The University District Branch Library (located at Roosevelt Way N.E. and N.E. 50th St.)

The University District Fire Station (located at N.E. 50th St. and 11th Ave. N.E.)

The University Neighborhood Service Center (located at 4534 University Way N.E)

The facilities of its utilities: City light, City water, and sewerage/drainage of Seattle Public Utilities..

Sound Transit is building its U District Station at N.E. 43rd St. and Brooklyn Ave. N.E. When complete, its station will occur two-thirds of the westerly block face and the almost the entire sub-surface of Brooklyn Ave. N.E. between N.E. 43rd St. and N.E. 45th

St. Its station will have two portals on the surface taking over a section about the size of a forty foot lot at both the north and south ends of its station site. It anticipates a traveling public of 24,000 people will use its portals every weekday and a substantial volume on weekends. It anticipates that its station will be the busiest single site in the entire University District. Sound Transit is located in the “area base” and the “South Ave. Cleaning Area” (Map, Exhibit A.) The scheduled opening of the Station is several years away, but construction is in progress.

Surely, the cleaning crews will sweep the sidewalks around the parks and the Sound Transit station even while construction is going on and certainly afterward. RCW 35.87A.170 allows an exemption for new businesses and projects “.for a period not exceeding one year from the date they commenced business in the area.” Section 6 F of CB 118302 makes an adjustment in the inflationary factor for “new benefit areas” not in the original assessment. It does not contain an exemption for construction. Its exemptions for governmental entities is permanent and absolute.

RCW 43.09.210 requires governments to pay true and full value in transactions between governmental entities and between funds of a governmental entity so that no government or separate fund “. . . shall benefit in any financial manner whatever by an appropriation or fund made for the support of another.” It provides in part as follows:

“Separate accounts shall be kept for each department, public improvement, undertaking, institution, and public service industry under the jurisdiction of every taxing body.

“All service rendered by, or property transferred from, one department, public improvement, undertaking, institution or public service industry to another, shall be paid at its true and full value by the department, public improvement, undertaking, institution, or public service industry receiving the same, and no department, public improvement, undertaking, institution or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another.”

This section requires the state to pay superior court filing fees to Grays Harbor County, *State v. Greys Harbor County*, 98 Wn.2d 606 (1983). It required the City to pay from general revenues for street lighting as a ratepayer; it could not freeload off City Light, *Okeson v. City of Seattle*, 150 Wn.2d 540 (2003). *Lane v. City of Seattle*, 164 Wn.2d 875 (2008) required for the City of Seattle to pay its water department for service for fire hydrants and the City of Lake Forest Park to pay the City of Seattle for water service to its fire hydrants.

The properties of the City of Seattle and Sound Transit will benefit from the services to be provided by the PBIA and should pay their fair share as ratepayers. The permanent exemption is void.

II. EXPENDITURES EXCEED STATUTORY AUTHORITY

Section 3 of Resolution 31565 (CB 118302, Section 5) authorize objects for expenditure that go beyond the statutory purposes listed in RCW 35.87A.010 and thereby the City's authority. The six objects of the listing in Section 3 of Resolution 31565 (CB 118302, Section 5) include "B Policy and advocacy;" The final paragraph begins with this sentence:

"The listing of services is illustrative and not exclusive."
"Advocacy" in the phrase "policy and advocacy" is a euphemism for lobbying, both directly with officialdom and grassroots lobbying with the public. "Illustrative and not exclusive" is another way of saying "there's more.."

Lobbying is one of those objects of spending for which the municipal law requires explicit authorization. Another is making gifts. While a first class city may lobby with its general funds, no statute authorizes a municipal corporation to engage in lobbying from a limited purpose or trust fund.

RCW 35.87A.120 accords with a restrictive interpretation of using PBIA funds to the seven purposes identified in RCW 35.87A.010 (1). RCW 35.87A.120 states:

"The special assessments levied hereunder must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose."
It was included to empower the ratepayers at the petitioning stage to limit and thereby control use of the funds collected, e.g. the petition may name the first purpose authorized in RCW 35.87A.010 (1)(a), building a new parking garage, or like Resolution 31565 (CB 118302) pointedly omit it (and thereby exclude parking); and if only some of the statutorily enumerated purposes are omitted, keep the PBIA funds from being used for that end. When so read, the section become potent and serves a purpose. RCW 35.87.120 would be superfluous if a city could use PBIA funds for any public purpose listed in its ordinance. The section would then just be a repetition of municipal law

If the legislative intended that a city could expand use of the money beyond the statutory purposes. the legislature would have added a catch-all to the listing in RCW 35.87A.010(1). A concluding catch-all might read " such as other purposes as determined by ordinance." Instead, RCW 35.87A.010 concludes with the restraining language, "as provided in this chapter."

III. ORDINANCE DEFECTS

Landowners subject to levy ---

Resolution 31565 in Section 5 (CB 118302, Section 6) levies the charges upon "the *owners of business property, multi-family residential property ... and mixed use property.*" It uses assessed values as a base in its formulae. "Property" in this context implies real property; "business property" is commonly used to set apart premises for commercial purposes as distinct from residential uses. The noun "property" would be surplus if the intended ratepayers are the enterprises. Note also that the City's levy on

substitutes “property” for the statutory term “projects.” The levy is therefore made upon the owner of the land rather than the business enterprise that occupies the land.

RCW Chapter 35.87A authorizes assessments upon “businesses” and multifamily or mixed use Projects. RCW 35.87A.010 and RCW 35.87A.030 contemplate signatures of “persons who operate business in the proposed area.” RCW 35.87A.050 directs notice to “each business” or project. “Businesses” may restrain proceedings by protest. RCW 35.87A.100 states that “businesses and .. projects” are subject to the assessment.

There is a major difference between levying an assessment on a land owner and on a business occupant. A majority of the business enterprises in the U District are tenants, who lease. The title to much of the personal property on site may also reside in banks or suppliers. When the levy is the owner of the business, the primary obligor is the business, and billing and collection begins with the business owner. and, if the businesses liability is limited by incorporation in its various forms, recourse for an unpaid debt attaches to the assets of the business, but not to passive investors or to the landlord. If the charge is upon the owner of the realty, then it effectively becomes a lien on the realty in the manner of local improvement assessments, RCW 35.87A.130. The owner of the realty is at risk of foreclosure for non-payment. A landlord can only pass on the charge if the lease agreement so allows. Moreover, assessing the owners of property applies the charge even though the premises are vacant.

The noun “property” must therefore be stricken from the levy clause of Section 6 of CB 118302 and the levy made on businesses and projects as the statute directs.

Assessments do not reflect the special benefits ---

RCW Chapter 35.87A in sections 35.87A.010, RCW 35.87.080, 35.87.090, 35.87A.150 requires that assessments reflect the special benefits to be conferred. To achieve that end, RCW 35.87A.080 authorizes classifications and factors such as square footage of the business, number of employees, gross sales, or “any other reasonable factor relating to the benefits received.” Assessments and other special charges that fail to reflect the special benefits conferred by the expenditures become special taxation prohibited by Article 7, Section 9 of the Washington Constitution. “Any formula must ultimately relate to benefits, not merely the distribution of costs.” *Kusky v. City of Goldendale*, 85 Wn. App 493, 500 (1997); *Bellevue Plaza v. Bellevue*, 121 Wn. 397, 415 (1993).

Resolution 31565. Section 5 (CB 118302, Section 6) measures assessments in the “fund area base” by “total taxable value” per thousand dollars as shown on the assessment records of the King County Assessor on April 30, 2014, except that properties that are partially tax exempt pay an incremental amount for the taxable portion. The cleaning area base formulae add a multiplier of lot area square footage.

Section 5 E of CB 118302 requires the PBIA "... to maintain the current level of services and benefit provided by the University District BIA. The component programs identified in Section 5 in the opening paragraph start with "events and marketing" and continue through "economic development." The long history of PBIA's in the University District have been on promoting commercial activity and on activities centered on the core business district on the 'Ave between Campus Parkway and N.E. 52^h St. That emphasis is likely to continue. Those benefiting from them --- businesses engaged in retail goods and services catering to the general public, entertainment, and establishments serving alcohol --- should pay the lion's share of the costs of those components. Arguably, residential projects may be asked to pay for sidewalk sweeping and supplemental policing, but certainly not at the same rate as the businesses that generate the need for those services. Common sense advises that, for sidewalk cleaning, those businesses like taverns and entertainment with smoking breaks ought to pay at a higher rate for sweeping up cigarette butts and literature left by their patrons.

At the January 12, 2015 hearing, public testimony stated that the expanded boundaries and new formula would in realty shift the burden of promoting business in the core area, now carried by businesses located there, to the Projects and the small businesses on the west and north. It would even affix the assessments on the small businesses on N.E. Boat St., who are effectively cut off from the U District core by the UW West Campus, which is destined for a cluster of more mid-rise structures. No evidence was supplied at the hearing or to ratepayers to justify use of the single factor assessed value formula.

The Seattle Displacement Coalition will present more testimony about the injustice of the assessment formula and boundaries. Suffice as to say, one test of the formulae is their results. Here are some of the anomalies created:

University Plaza condominiums at the western edge of the district will pay more under the base formula than the University Book Store, the largest retail establishment in the district.

A small shop at the north end with a clientele of no more than ten per day pays more in assessments than Sound Transit, which will generate 24,000 in foot traffic every weekday.

University Christian Church pays on the charities who use its building, but not on its parking lot across 15th Ave. N.E. University Presbyterian Church pays on its parking lot on the west side of 15th Ave. N.E., but not on its church.

The assessment formula fails the statutory special benefits test.

Ratability ---

"A property should not bear proportionately more than its share of the total assessment relative to other parcels in the LID." *Hasit, LLC v. City of Edgewood*, 179 Wn.App. 917,933 (2014); *Sterling Realty Co. v. City of Bellevue*, 68 Wn.2d 760, 769 (1966). An assessment formula must be rational and equally applied to all those assessed in a similar situation. *In Re Fifth Avenue West*, 80 Wash. 464, 468 (1914).

The formulae of Resolution 31565, Section 5 (CB 118302, Section 6) are not ratable.

The formulae exempt the second largest land owner, the City, and other governments.

The formulae omit businesses that benefit, but, are assessed on a multi-jurisdiction basis, such as cable and telephone companies. The King County Assessor does not bear them down to the proportion of the business done within the PBIA.

Using assessed values makes no breakdown on individual businesses within buildings that have multiple enterprises. Any walk around the University District shows many buildings with two or more separate businesses. An address directory reveals listings for different offices or suites at the same street address in a multi-story building. Billing the landlord either exempts the leased businesses or vests the landlord with authority to apportion charges. Either way, the assessment flunk the assurance of proportional treatment contemplated by the ratability requirement..

The formulae omits businesses without a fixed location, such as mobile catering that use the same location on a frequent basis.

Section 6 of Ordinance 118302 guarantees businesses within the current University District BIA "the current level of services and benefits." Other areas are not so favored.

V. BAD POLICY CHOICES

Lack of Transparency ---

CB 118302 lacks any requirements of transparency. Section 14 establishes a Ratepayer Advisory Board; Section 16 contemplates contracting with the U District Partnership as the initial Program Manager; and the Program Manager to operate the day-to-day affairs and administer the projects and activities. CB 118302 does not require that meetings of the Ratepayer Advisory Board comply with the Open Public Meetings Act or that its records and that of the Program Manager be open to ratepayer inspection. Both the Board and the Program Manager may assert privacy and opaqueness vis-à-vis the public and ratepayers seeking information.

Operation of Ratepayers Advisory Board --

CB 118302 in Section 14 requires the Director to appoint an Interim Ratepayers Advisory Board and later appoint a permanent Board from a list recommended by the interim Ratepayers Advisory Board; the Director can add additional members to the permanent Board, but may not decline to appoint a nominee made by the Interim Board even for cause. Council Bill 118302 contains no terms for Board members, and although it calls for annual meetings, it contains no provision for elections by the ratepayers of even one Board member. Perhaps, the Board is to determine this by its by-laws. Nothing gives the Director or the ratepayers any say over the by-laws.

35% of the Advisory Board membership must go to the UW. It may assume up to 65%. On a twelve member board, the UW will have been 5 and 7 representatives, and, depending on the by-laws a veto over Board recommendations. An alliance of the UW

with a major property manager could easily control the Board to the dismay of all other ratepayers. Under the manner the City calculates "assessments," all the other ratepayers together could not petition to disestablish the PBIA district under Section 18 if the UW wanted it to continue; but, if the UW wanted to disestablish the PBIA, it would need only 14% more --- 28.9 % of the other ratepayers. It's positioned like the boy that brings the only basketball to a pick-up game at a park court and, if he's dissatisfied with the play at any time, can take his ball and go home.

Section 14 provides for an annual meeting of ratepayers to review the proposed work plan and budgets for the next year and whether to continue to contract with the current Program Manager. It then specifies that "The work plan, budget, and recommendation regarding whether to continue with the current Program Manager *must* be approved by vote of the Ratepayers attending the meeting...." (emphasis supplied). The mandatory term, "must," makes the annual assembly little more than a formality that, like a soviet style congress, is obliged to approve whatever the directorate sets before them. If the ratepayers are to have any independence of judgment, the ordinance should make the proposals of the Board subject to the ratepayers' approval.

Section 15 further allows the ratepayers at the annual meeting to be deprived of effective choice over continuing a contract with the program manager that Section 14 purports to allow. Section 15 empowers the Director to contract with the Program Manager for a term of up to five year. A five year contract forecloses a free choice by the ratepayers in the second year of the contract unless there is cause for termination and the ratepayers are willing to risk a contract dispute. A five year contract means one Program Manager for the duration, and if the five year contract is made after the PBIA gets going, terminating the PBIA may cost severance pay for the Program Manager.

Since the landlords are billed, can tenant businesses or tenants of multi-family residential structures be considered as ratepayers at all and vote? If they can vote, are votes one person, one vote in a democratic manner or are they weighted by the amount of payments made. If weighted, how? Does the UW get a 46% block ballot measured by its contribution? (The way the City purports to count the UW contribution on the initiating petition sets that precedent.) If so, the annual meeting becomes little more than an annual presentation like the meetings of shareholders of a publicly listed corporation where the management holds most of the proxies.

Deposits in PBIA subaccount ---.

Section 8 provides for five types of funds to be deposited in the "University District BIA Account/" It omits "interest" on delayed payments, "delinquency charges" and "processing fees" named in Sections 9 and 10 and a catch-all, such "as other payments due to the PBIA."

Disputes and collections ---

Under Sections 8 and 11, ratepayers may grieve to the Director only the amount of an assessment or a delinquency charge and appeal those matter to the Hearing Examiner. Ratepayers can not question any expenditures or the award of a program management contract. A contest or questioning of compliance of an award of a contract under RCW 35.87A.200- 210 must go to court and risk attorney's fees.

Under Section 9, assessments become delinquent after sixty days after the due date and thereupon the Director may refer the matter to a collection agency. Under Section 10, failure to receive a mailed notice does not excuse. Nothing defers payment pending an appeal. Thus, this system requires a ratepayer to pay while disputing an assessment or appealing to the Hearing Examiner or risk paying delinquency charges in the interim. It would be more fair to suspend payment and penalties pending resolution of the dispute..

Section 15 A allows the Director to extend the deadline or waive delinquency add-ons for “extenuating circumstances beyond the Ratepayer’s control...” However, the Director has no authority to waive the basic assessment even if a “casualty loss” causes “premature closure of the business or bankruptcy.”

Undefined terms ---

The formula uses undefined terms to base payments required of rate payers.. All the formulae refer to “Total Taxable value” and “Total Appraised Value.” The lead-in paragraph of Section 6 of CB 118302 (Resolution 31565, Section 5) gives a clue to legislative intent: “The initial assessment calculations will be based upon King County Assessor’s Office records as of April 30, 2014.” The real property tax statutes base taxes on assessed values. They do not define “appraised value” or “taxable value.” The Assessor’s Official Property Value Notice gives “Appraised Value” and “Value after Exemption.” A property’s assessment history (found at the Assessor’s office and in its website on the internet) lists “appraised total” as a component of “taxable total.”

Map of area ---

The map, Exhibit A, fails to correlate with the descriptions in Section 2 of Resolution 31565 (CB 118302, Section 4). While Section 2 of Resolution 31565 (Section 4 of CB 118302) concludes with the sentence that the street description in the text controls over the map, the two really ought to cohere. Administrators and others have a tendency to look at the map rather than read a boundary description. The street description uses the eastern boundary of Interstate 5; the map includes the landscaping west of 7th Ave N.E. The street description for the south boundary is the State Harbor Line of Portage Bay; the map shows a dotted line as the State Harbor Line and the south boundary line north of the dotted line.

V. INSUFFICIENT SUPPORT

CB 118302 cites Resolution 31565 as initiating the process. Resolution 31565 its second Whereas clause claims “owners of business, multi-family residential, and mixed use properties that are subject to nearly 65 percent or more of the special assessments” petitioned for the PBI. Resolution 31565 thereby purports to be acting pursuant to a statutory petition. The recital is nothing a smoke screen.

Both RCW 35.87A.010 and .030 contemplate a petition to show support for establishing a PBI. RCW 35.87A.030 in its second paragraph requires an initiating petition contain “the signature of the persons...which would pay fifty percent of the

proposed assessments.” RCW 35.87A.010 (1) authorizes cities “To establish, after a petition submitted by the operators responsible for sixty percent of the assessments by businesses and multifamily residential or mixed-use projects within the area, parking and business improvement areas.”

In fact, however, the City is acting entirely on its own authority. The UW contribution is not an assessment under either RCW 35.87A.030 or RCW 35.87A.010. RCW Chapter 35.87A confers no authority on the City to assess any state lands. It nowhere mentions state property. The payment by the UW is not an “assessment” within the authorization under RCW Chapter 79.44 for paying assessments on state land. The payment by the UW is not compulsory as those on privately owned enterprises nor can it be enforced against the state. It is entirely voluntary.

At the City Council hearing on January 14, 2015, City Council staff in response to a direct question from the public gave these numbers:

- The UW would contribute 46% of the gross revenue;
- The UW contribution together with the petition supporters amount to 67% of the gross revenue. Resolution 31565 puts the percentage at “nearly 65%”.

From these figures it follows,

- The supporters of the petition will pay 21% of the gross revenue ($67\% - 46\% = 21\%$).
- Those who did not sign equal 33% of the gross revenue ($100 - 67\% = 33\%$). --
- 54% of the revenue comes from assessments (excluding the UW contribution)($100\% - 46\% = 54\%$).
- The signers and supporters of the petition are slightly less than 39% of the operators of businesses and projects subject to assessment ($21\% / 54\% = 38.88\%$).

If the 65% support figure is used, the supporters would be paying 19% of the gross revenue; those who did not sign would equal 35% of the gross revenue and the percentage of the signers/supporters would be 35.19 % of the assessments. The signers/supporters of the petition falls short of a majority of the operators and Projects subject to assessments..

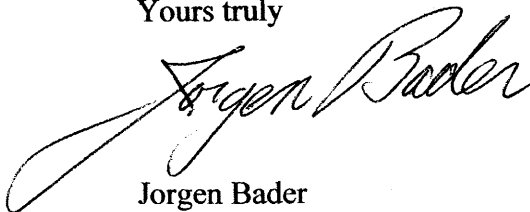
The City will be getting the PBIA off to a bad start. It is imposing special tax unwanted by the majority of the ratepayers. The community councils, which represent the affected neighborhoods, oppose creating the super-sized PBIA proposed by Resolution 31565 and CB 118302. By dissembling in Resolution 31565 and wrongly proclaiming majority support, the City will be setting a precedent for more distortions by the administrators and program managers and for general public distrust and long term, deep resentment in the community.

CONCLUSION

The City Council should refer Council Bill 118302 back to the mayor with directions to comply with applicable state statutes cited in this letter, retract the boundaries to the area where ratepayers who support the PBIA pay 50% or more of the

assessments (excluding the UW contribution) and address the bad policy choices identified.

Yours truly

A handwritten signature in cursive script that reads "Jorgen Bader". The signature is written in black ink and is positioned between the words "Yours truly" and the printed name "Jorgen Bader".

Jorgen Bader