

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

SEATTLE/KING COUNTY COALITION  
ON HOMELESSNESS, ACLU OF  
WASHINGTON,  
and TRANSIT RIDERS UNION.

Plaintiffs,

vs.

COMPASSION SEATTLE, KING  
COUNTY, and JULIE WISE, in her official  
capacity.

Defendants.

No. 21-2-10563-3 SEA

ORDER GRANTING CORRECTION OF  
ELECTION ERROR (RCW 29A.68) AND  
DECLARATORY AND INJUNCTIVE  
RELIEF

This matter comes before the Court on Plaintiffs Seattle/King County Coalition on Homelessness's, ACLU of Washington's, and Transit Riders Union's affidavit and motion for an order to prevent election errors under RCW 29A.68 and for declaratory and injunctive relief. Having considered Plaintiffs' affidavit, motion, and the authorities and declarations submitted therewith, Defendants' responses, Plaintiffs' reply, and the parties' oral arguments, the Court finds the Plaintiffs' requested relief should be granted.

The Court hereby declares that Compassion Seattle's proposed amendment 29 to the City of Seattle Charter ("CA 29"), is beyond the power of the local initiative process, null and void, for the following reasons.

1 CA 29 interferes with multiple powers that the Legislature delegated to the Seattle City  
2 Council. “An initiative is beyond the scope of the initiative power if the initiative involves powers  
3 granted by the legislature to the governing body of a city, rather than the city itself. ... When the  
4 legislature enacts a general law granting authority to the legislative body (or legislative authority) of  
5 a city, that legislative body's authority is not subject to repeal, amendment, or modification by the  
6 people through the initiative or referendum process.” *Mukilteo Citizens for Simple Gov't v. City of*  
7 *Mukilteo*, 174 Wn.2d 41, 51 (2021) (internal citations omitted). “Stated another way, the people  
8 cannot deprive the city legislative authority of the power to do what the constitution and/or a state  
9 statute specifically permit it to do.” *City of Sequim v. Malkasian*, 157 Wn.2d 251, 265, 138 P.3d 943  
10 (2006).

11 The Court finds that this body of caselaw is applicable to any exercise of direct democracy  
12 under a city or county charter, whether it's the charter's initiative, referendum, or charter amendment  
13 process. This doctrine has been applied to Seattle charter amendments. *Benton v. Seattle, Electric*  
14 *Company*, 50 Wash. 156 (1908) (declaring a Seattle charter amendment invalid because state law  
15 delegated authority to regulate street car to the “legislative authority of the city,” which “means the  
16 mayor and city council,” and the people's right to amend the charter “cannot be construed to mean  
17 that the charter can be so amended as to override a statute of the legislature which was intended to  
18 and does deal directly and specifically with the subject-matter in question.”). And, in turn, *Benton*  
19 has been relied upon by later cases limiting the local imitative process. *See King County v.*  
20 *Taxpayers of King Cty.*, 133 Wn.2d 584, 610 (1997).

21 The limited powers under the charter derive from the supremacy of state law over local law.  
22 “While the inhabitants of a municipality may enact legislation governing local affairs, they cannot  
23 enact legislation which conflicts with state law.” *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d  
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1 740, 747 (1980) (citing Wash. Const. art XI, § 10). “The fundament proposition which underlies the  
2 powers of municipal corporations is the subordinations of such [municipal] bodies to supremacy” of  
3 state law. *Id.*

4 Further, many cases limiting the local initiative process arise from charter cities like Seattle  
5 and Spokane or counties, where the city or county charter creates the right of initiative and  
6 referendum. These decisions are based upon the limited strength of the local charter vis a vis state  
7 law. *See Save Our Park v. Bd. Of Clallam*, 74 Wn. App. 637, 644 (1994) (initiative power conferred  
8 in county home rule charter limited to compliance with state law).

9 Thus, the Supreme Court applies the black-letter law limiting the local initiative and  
10 referendum power to charter amendments. *Spokane Entrep. Ctr. v. Spokane Moves*, 185 Wn.2d 97,  
11 104 (2016). Sponsors try to differentiate the Spokane and Seattle charters, but the Supreme Court did  
12 not rely upon the nuance of the Spokane Charter in its *Spokane Entrepreneurial* decision. It relied  
13 upon the same body of caselaw upholding the supremacy of state law over local law, even noting the  
14 “limited powers of initiatives *under city or county charters.*” *Id.* (emphasis added).

15 CA 29, Sec. 2 would interfere with the City Council’s power over land use. It states:

16 During a declared civil emergency related to homelessness, and to accelerate the production  
17 of emergency and permanent housing serving homeless individuals (“projects”) as required  
18 by this Article IX, it is City policy to and the City shall, to the full extent permitted by state  
19 law, (a) waive land use code and regulation requirements as necessary to urgently site  
20 projects, (b) waive all City project-related permitting fees for projects and, (c) process the  
21 application for project-related permits as first-in-line in order to expedite the permitting  
22 process.

20 CA 29, Sec. 2.

21 **Land use and zoning.** Power to modify the zoning code belongs exclusively to the City  
22 Council and is beyond the power of the initiative. *Leonard v. Bothell*, 87 Wn.2d 847, 853 (1976)  
23 (“[Z]oning ordinances and regulations are beyond the power of initiative or referendum in  
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1 Washington because the power and responsibility to implement zoning was given to the legislative  
2 bodies of municipalities, not to the municipalities as a whole.”). CA 29 extends beyond the  
3 initiative power also by waiving permitting fees and changing the permitting process, which are also  
4 regulated by the zoning code. *See e.g.*, SMC 23.76.006 (timing of permit decisions); 23.76.008 *et*  
5 *seq.* (permit application process); 23.76.010.C (requiring applications be accompanied by payment of  
6 the applicable filing fees). An initiative that undoes a council act taken under its statutory authority is  
7 outside of the scope of the initiative power. *Protect Public Health v. Freed*, 192 Wn.2d 477, 486  
8 (2018).

9 In addition, CA 29 would amend the charter to state “there is no right to camp in a particular  
10 place,” which could invalidate the City’s existing transitional encampment ordinance, a zoning  
11 regulation under which the City may bestow a temporary right to camp in a particular place. SMC  
12 23.42.056.B.3 (transitional encampments permitted on public property).

13 **Budgeting.** CA 29 purports to budget by initiative, earmarking 12% of the general fund for  
14 human services, which is also beyond the scope of the initiative process. In *Protect Public Health*,  
15 the Supreme Court held that “the ability to set the budget . . . is a specific delegation by the  
16 legislature to the county’s legislative authority,” and therefore “outside of the scope of the local  
17 initiative power.” 192 Wn.2d at 486-487. Likewise, the Legislature granted the Seattle City Council  
18 exclusive authority to establish the level of funding for all city functions and programs and adopt a  
19 budget. In cities such as Seattle that have adopted a biennial budget process, “*the legislative body*  
20 *shall make such adjustments and changes as it deems necessary or proper and, after determining the*  
21 *allowance in each item, department, classification, and fund, shall by ordinance adopt the budget in*  
22 *its final form and content.”* RCW 35.34.120 (emphasis added). *See also* RCW 35.34.010 (“The  
23 legislature hereby recognizes that the development and adoption of a budget by a city or town is a  
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1 lengthy and intense process designed to provide adequate opportunities for public input and  
2 sufficient time for deliberation and enactment by the legislative authority”); RCW 35.34.030  
3 (“Legislative body’ includes *the council, commission, or any other group of officials* serving as the  
4 legislative body of a city or town” (emphasis added)).

5 CA 29 exceeds the scope of the initiative power by attempting to control the City Council’s  
6 budgetary authority. The measure provides:

7 There is hereby established in the City Treasury a Human Services Fund to support the  
8 human services and homeless programs and services of the City. ***There shall be placed***  
9 ***in the Human Services Fund such moneys as may be budgeted annually for such***  
10 ***programs including not less than 12 percent of the City’s annual general fund***  
11 ***revenues; grants, gifts and bequests for human service purposes received from the***  
12 ***general public, businesses and philanthropy; and such other moneys as may be provided***  
13 ***by ordinance, without delaying or disrupting full restoration of general fund support***  
14 ***for the Department of Parks and Recreation to facilitate repair and restoration of***  
15 ***parks and as required by the Interlocal Agreement authorized by City Ordinance***  
16 ***124468.***

17 CA 29, Sec. 3 (emphasis added). Under *Protect Public Health*, CA 29 is invalid for this intrusion  
18 into the City’s budgeting process.

19 **Homelessness planning.** CA 29 also interferes with the City Council’s role in homelessness  
20 planning. Chapter 43.185C RCW requires many inputs to local homelessness planning – including  
21 from state planning and local stakeholders – but gives the “local government legislative authority”  
22 (the City Council or County Council) the exclusive authority to enact local homeless housing plans:

23 (1) *Each local homeless housing task force shall prepare and recommend to its local*  
24 *government legislative authority a five-year homeless housing plan for its jurisdictional area,*  
which shall be not inconsistent with the department's statewide guidelines issued by  
December 1, 2018, and thereafter the department's five-year homeless housing strategic plan,  
and which shall be aimed at eliminating homelessness. *The local government may amend the*  
*proposed local plan and shall adopt a plan by December 1, 2019.* Performance in meeting the  
goals of this local plan shall be assessed annually in terms of the performance measures  
published by the department. *Local plans may include specific local performance measures*  
*adopted by the local government legislative authority, and may include recommendations for*  
any state legislation needed to meet the state or local plan goals.

1 RCW 43.185C.050 (emphasis added). Elsewhere, the Legislature confirmed this exclusive  
2 delegation. *See* RCW 43.185C.080(1) (“the city may by resolution of its legislative authority accept  
3 the county’s homeless housing task force as its own and based on that task force's recommendations  
4 adopt a homeless housing plan specific to the city”); *id.* at (2) (“subcontracts shall be consistent with  
5 the local homeless housing plan adopted by the legislative authority of the local government . . .”).

6 The content of CA 29 overlaps with the content of local homelessness plans and, as a charter  
7 amendment, would unlawfully dictate those plans, interfering with the City Council’s statutory  
8 authority.

9 CA 29 is also inconsistent with the statutory scheme for homelessness planning adopted by  
10 the Legislature under chapter 43.185C RCW. Local initiatives and referenda cannot be used in this  
11 context, where the Legislature has enacted a comprehensive decision-making scheme that does not  
12 include initiative and referenda. *Whatcom County v. Brisbane*, 125 Wn.2d 345, 351 (1994). In  
13 addition, the statutory scheme requires coordinated planning, precluding the use of the initiative and  
14 referendum process. *See Brisbane*, 125 Wn.2d 345 (striking referendum because “the GMA seeks  
15 coordinated planning. . . allowing referenda is structurally inconsistent with this mandate”); *1000*  
16 *Friends of Washington v. McFarland*, 159 Wn.2d 165, 180-181, 188 (2006) (holding use of a  
17 referendum “is inconsistent with integrated, comprehensive planning”). Finally, adopting a static  
18 six-year plan for homelessness response and homeless housing through charter amendment is  
19 inconsistent with the statutory requirement for planning on a five-year horizon with annual  
20 updates. RCW 43.185C.040(1) (state must prepare and publish a “five-year homeless housing  
21 strategic plan” by 2019 and “every five years thereafter”); RCW 43.185C.045(1) (requiring  
22 annual “update on the state’s homeless housing strategic plan”).

1           **Administrative matters.** Finally, the Court finds that CA 29 interferes with administrative  
2 matters. The “power to administer the law, and administrative matters, particularly local  
3 administrative matters, are not subject to initiative or referendum.” *City of Port Angeles v. Our*  
4 *Water-Our Choice!*, 170 Wn.2d 1, 8 (2010) (“*Our Water*”). “Generally speaking, a local government  
5 action is administrative if it furthers (or hinders) a plan the local government or some power superior  
6 to it has previously adopted.” *Our Water*, 170 Wn.2d 1, 8. Here, Seattle and King County have  
7 adopted ordinances entering a binding interlocal agreement that commits them to jointly planning,  
8 funding, and implementing homelessness response through the King County Regional Homelessness  
9 Authority. Since its establishment in 2019, the Regional Authority has been funded and staffed and  
10 is taking over these responsibilities.

11           Through enacting Ordinance 126021 and entering into the ILA, the City Council moved  
12 homelessness response into the administrative realm. CA 29’s attempt to modify the coordinated  
13 regional policy and implement its own homelessness response program exceeds the scope of the  
14 initiative power. *Our Water*, 170 Wn.2d 1, 8l; *Spokane Entrep. Ctr.*, 185 Wn.2d at 108.

15           The Court also notes that Plaintiffs have submitted evidence to support their standing, which  
16 Defendants did not challenge.

17           For the foregoing reasons, the Court DECLARES that CA 29 exceeds the scope of the  
18 initiative power, is invalid, null, and void.

19           The Court further ENJOINS AND PROHIBITS King County and King County Auditor Julie  
20 Wise from placing CA 29 on the November 2021 general election ballot (or subsequent election  
21 ballots), tabulating votes on CA 29, and otherwise furthering an election on CA 29.

1 SO ORDERED this 30th day of August, 2021.

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5 The Honorable Catherine Shaffer  
6 King County Superior Court Judge

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