

Resolution recommending endorsement of People First Bellingham Initiatives

WHEREAS, at its April General Membership Meeting, Whatcom Democrats passed resolutions supporting signature gathering efforts on behalf of the four People First Bellingham Initiatives;

WHEREAS, the Auditor has confirmed that the four People First Bellingham Initiatives will be on the November ballot;

WHEREAS, no legislation is perfect, and one must balance merits and flaws in reaching a decision whether to endorse or not endorse;

WHEREAS, as pointed out by City Council Member Lisa Anderson at the July 12 meeting of the City Council, whatever the flaws in these initiatives, 1) the fact that roughly 6,200 duly registered Bellingham voters signed the petitions indicates pent-up demand for the underlying issues to be addressed, and 2) City Council membership is a part-time position and lacks staffing assistance to address these issues in a timely manner, with just a single legislative analyst for the entire council;

WHEREAS, ignoring these pleas and indefinitely postponing action is not a viable option;

WHEREAS, we would have preferred that City Council have the option to offer alternatives as provided in City Charter section 10.04, but the Auditor's schedule did not make this feasible;

WHEREAS, the ordinance adopted this year providing pandemic hazard pay for supermarket employees applies only to the present pandemic, and we need to have an ordinance already in place for the next serious emergency that places certain workers at higher risk, so that there is not a long delay before hazard pay is implemented. This year's ordinance took effect a year after the pandemic struck, and hazard pay only kicked in as effective vaccines were made available to employees;

WHEREAS, the City Charter states, "The Council shall not perform administrative functions of the City," and "The registered electors of the City may propose any ordinance, or amendments to any existing ordinance, relating to matters within the legislative, as distinguished from administrative, powers of the City as a corporate entity," and the City Attorney has expressed his opinion that the initiatives infringe on the administrative powers. Administrative functions include appointments and supervision of staff, city finances, etc. All that means is that the legislative power may set policy but not determine how that policy is executed. A ban on all facial recognition technology is a general policy, hence a legitimate subject of legislation. The King County Council adopted such a ban on June 1;¹

WHEREAS, the oft-heard assertion that Bellingham has a "strong mayor" system of government is only true relative to cities with city managers and *ceremonial* mayors. The City Charter makes no mention of a "strong mayor." Instead, it states (3.01), "The Council shall have all the legislative powers and authority allowed cities in the State of Washington, whether they are specifically enumerated in the Charter or not. The Council shall have general ordinance-making powers and control over the City finances and properties." By law, the Council has normal legislative authority. That means the initiative power, which is simply the citizenry exercising direct legislative authority, does as well.

THEREFORE, BE IT RESOLVED, we advise our members:

1) Endorse a Yes vote on Initiative 2021-01, Renter Protections. Requires landlords to provide written notice 90 days before terminating a rental agreement without cause or increasing rent by more than 5% in a rolling 12-month period; require landlords to pay rental relocation assistance equal to three months of the current fair market rent in the Bellingham area when terminating a rental agreement without cause or increasing rent more than 8%, if requested by tenant, with limited exceptions; and authorize private party civil enforcement actions.

While we recognize this affects all landlords, small as well as large, renters face far more dire predicaments. According to the American Community Survey, 57% of renting households in Bellingham are cost-burdened (spending more than 30% of household income on housing). The current rental vacancy rate in Bellingham of 0.2-2.0% is below the recommended 7% rate, making it difficult for renters to find decent, safe, affordable housing. Relocation is not merely difficult but expensive (e.g., first and last month's rent, deposits, moving expenses, and utility deposits), and puts renters under economic stress that increases their risk of becoming homeless;

Adopted by a unanimous vote (42-0-0) at the July 24 General Membership Meeting

2) Endorse a Yes vote on Initiative 2021-02, Ban on Advanced Policing Technologies. Prohibits the City from acquiring or using facial recognition technology, prohibits the City from contracting with a third party to use facial recognition technology on its behalf, prohibits the use of predictive policing technology, prohibits the retention of unlawfully acquired data, prohibits the use of data, information, or evidence derived from the use of facial recognition technology or predictive policing technology in any legal proceeding, and authorizes private civil enforcement actions.

The allegation that this would prohibit the Bellingham Police Department from cooperating with state agencies or the FBI if the latter use such technologies is false. Not only does the legislation not say anything of the kind, but it also states that "Nothing in this article shall be construed to: conflict with the Constitution of the United States, the Constitution of the State of Washington or with any State or federal law."

There have also been concerns that the Washington Courts Rules of Evidence would override any attempt to prevent banned technologies from being used in the municipal court. However, the court rules are explicitly subject to statute: a term which encompasses all law pertaining to a specific jurisdiction (for the Bellingham municipal court, "statute" refers to the United States Code, the Revised Code of Washington, and the Bellingham Municipal Code). Precedent can be found in Seattle's ban on the use of speed traps as evidence in municipal court proceedings (SMC 11.52.200).

There have also been concerns that the ban on predictive policing software (PPS) would prevent police departments from effectively doing their jobs. However, PPS uses inherently biased data as inputs for their predictions, causing the outputs to be biased as well and continuing and in many cases worsening the injustices of the justice system.ⁱⁱ As the American

Civil Liberties Union has pointed out, “data collected by police is notoriously bad, easily manipulated, glaringly incomplete, and too often undermined by racial bias.”ⁱⁱⁱ Further, the Electronic Frontier Foundation has also pointed out that “predictive policing is a self-fulfilling prophecy.”^{iv} This has specific implications here in Bellingham where, according to the FBI, residents who identify as American Indian and Alaska Native are nearly ten times as likely to be arrested by the Bellingham Police Department as those who identify as white, while Black or African American residents are more than nine times as likely.^v

Adopted by a vote of 29-6-2 at the July 24 General Membership Meeting

3) Endorse a Yes vote on Initiative 2021-03, Protect the Right to Organize. Prohibits any person who receives City funds from using those funds to discourage unionization efforts by that person’s employees or any other employees, requires recipients of City funds to segregate those funds, provides a safe harbor for non-managerial staff to engage in union protected activities, provides for administrative investigations of complaints, establishes private enforcement actions, changes the City’s contracting process, and allows the City to terminate contracts for violations of the prohibition.

Some allege this violates businesses’ rights of free speech. Anti-union activities and reprisals go beyond free speech. Moreover, as a party that firmly stands with working people and the labor unions that protect their rights, we are unwilling to have our tax dollars subsidize anti-union activities. There have also been concerns that the required segregation of funds infringes upon the first-amendment rights of private entities by prohibiting the actions they can and cannot do with contracted money. However, the use of specifically designated restricted assets is commonplace in organizational accounting, whether it is for a restricted grant that may only be spent on programmatic activities, or the Hyde amendment which prevents federal funds from being used to perform abortions.

Further, there have been concerns that the initiative’s definition of receiving city funds is too broad and as such would include wages and salaries paid to city employees. However, the definition of the use of city funds requires it’s use on operating expenses and capital facilities, making it clear that the restrictions apply only to business activities. Further, Section 5 of the act states that “nothing...limits the rights of individuals who are not supervisors, managers, consultants, attorneys, advisors, or contractors of a recipient of city funds...”;

Adopted by a vote of 32-4-2 at the July 24 General Membership Meeting

4) Endorse a Yes vote on Initiative 2021-04, Hazard Pay and Scheduling Rights for Employees. Requires certain employers to pay a hazard pay supplement of \$4 per hour during a declared State of Emergency; requires employers to provide good faith estimates of weekly hours to new employees upon hire, requires employers to provide work schedules to hourly-wage employees two-weeks in advance, requires advance notice of any schedule changes, requires employers to compensate employees for changing their work schedules without sufficient notice, and prohibits adverse actions by employers.

On the one hand, Section 10 is seriously flawed: “If a State of Emergency is declared in any jurisdiction which includes the City of Bellingham, employers shall pay all on-site employees \$4 per hour in hazard pay or its equivalent in a prorated salary premium.” Governor Inslee just declared a State of Emergency for drought, exempting only the Seattle, Everett, and Tacoma metro areas.^{vi} As written, this would require employers in Bellingham to pay their on-site employees \$4 per hour hazard pay even though they face no greater hazard than anyone else. Even conservatively assuming that only half of the city’s 27,000 full-time, year round workers are working on-site, this would translate to a cost of more than \$430,000 per day.^{vii} Moreover, it fails to anticipate that in a wildfire smoke emergency, the prime hazard may be to off-site employees, who are not covered by this language.

On the other hand, 1) the rest of the initiative offers scheduling rights for part-time and gig employees at the bottom of the socioeconomic pyramid; 2) the City’s recently adopted ordinance providing for pandemic hazard pay for supermarket workers is expiring, and a permanent ordinance needs to be in effect for future emergency hazards, to not have a long delay in implementation (this year’s hazard pay kicked in a year after the pandemic struck, and at a time when workers already had access to effective vaccines); 3) the City could administratively implement the details of Section 10 on a selective and rational basis; 4) should Section 10 be invalidated by court action, the separate severability clause would preserve the rest of the initiative. Thus, on balance, we recommend endorsement of Initiative 2021-04.

Adopted by a vote of 29-3-1 at the July 24 General Membership Meeting

THEREFORE, BE IT FURTHER RESOLVED, we ask our state legislators to introduce legislation which creates statewide hazard pay for employees under specific conditions for all employees affected by the specific state of emergency.

THEREFORE, BE IT FURTHER RESOLVED, that Whatcom Democrats recommends to the Bellingham City Council that they take action to advance the entire schedule for collecting signatures on future initiative petitions, from start to finish, by two weeks (preserving the same total amount of time for gathering signatures), to afford adequate time for review by the city council between receipt of statements of sufficiency from the Auditor and the Auditor’s deadline for getting measures on the ballot.

THEREFORE, BE IT FURTHER RESOLVED, that Whatcom Democrats recommends adding a legislative analyst in the next City budget. We need a City Council better equipped to address the accelerating demands of a larger city in a fast-changing world.

Adopted by a vote of 42-0-0 at the July 24 General Membership Meeting, with the exception of the four individual votes on each initiative listed above.

ⁱ <https://www.seattletimes.com/seattle-news/politics/king-county-council-bans-use-of-facial-recognition-technology-by-sheriffs-office-other-agencies/>

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https://heinonline.org/HOL/Page?handle=hein.journals/walq94&div=35&g_sent=1&casa_token=PZuwL_i1ODMAAAAA:KGLdfnAjA3ZyiP4N6LfgL6Rq6jA39Hslqlwq67Sj8p3KC5UkKHpS8RZkyOS2uNGUMm1vzb0&collection=journals

iii <https://www.aclu.org/blog/criminal-law-reform/reforming-police/predictive-policing-software-more-accurate-predicting>

iv <https://www.eff.org/deeplinks/2020/09/technology-cant-predict-crime-it-can-only-weaponize-proximity-policing>

v <https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/arrest>

vi <https://www.seattletimes.com/seattle-news/politics/gov-inslee-declares-emergency-drought-as-wildfire-conditions-worsen-in-washington/>; <https://www.seattlepi.com/local/seattlenews/article/wash-state-emergency-drought-declaration-2021-16314968.php>

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https://data.census.gov/cedsci/table?q=ACSDT1Y2019.B03002&g=0100000US_0400000US53_0500000US53073_1600000US5305280&tid=ACSDP1Y2019.DP04&hidePreview=true