

Seattle Ethics and Elections Commission Regular Meeting

June 5, 2019

A special meeting of the Seattle Ethics and Elections Commission convened on June 5, 2019 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Brendan Donckers called the meeting to order at 4:05 p.m. In attendance were Vice-Chair Hardeep Singh Rehki, Commissioners Richard Shordt, Bruce Carter, Eileen Norton, Nick Brown, and Susan Taylor. Executive Director Wayne Barnett was joined by staff members Marc Mayo, Polly Grow, Annie Tran, Rene LeBeau, Mergitu Argo, and Chrissy Courtney. Assistant City Attorney Jeff Slayton was also in attendance.

1) Public Comment

Dennis Saxman, Marguerite Richard, Alex Tsimerman, Omari Tahir-Garrett and Chris Leman provided public comment.

Action Items

2) April 18, 2019 special meeting minutes

Commissioner Norton moved that the April 18, 2019 meeting minutes be approved, the motion was seconded by Commissioner Brown. The minutes were adopted unanimously, with no opposition, and no abstention.

The Director asked the commission to go briefly out of order to introduce Mergitu Argo, who worked with One America formerly, and is very active in Seattle's refugee and immigrant community, and who is a new communication team member working with the Democracy Voucher Program. Ms. Argo was welcomed by the commission.

3) Settlements

a) Case No. 18-1-1116-1 (\$360 penalty for misusing City property for personal benefit)

b) Case No. 18-1-1116-2 (\$280 penalty for misusing City property for personal benefit)

c) Case No. 18-1-1116-3 (\$280 penalty for misusing City property for personal benefit)

The Director indicated that there are three settlements for penalties imposed for improper use of parking access cards for use with city vehicles for strictly work purposes by City of Seattle Department of Transport (SDOT) employees. There was a complaint in Mid-October that there were people misusing their cards. The time frame between September 1, 2018 and October 31, 2018 was the period investigated. Marc Mayo, Ethics and Whistleblower Advisor, Trainer and Investigator, reviewed the records for twenty-seven employees and there were a few people who stood out in terms of the volume of times that the parking pass was misused. The normal rate for parking in the building at the Early Bird Rate would be twenty dollars, so the fines were calculated at forty dollars for each incident, two of the employees were found to have misused the passes seven times and one was found to have mis-used the pass nine times. The three settlements can be considered together by the commission, and the Director noted that in these settlements it was a requirement that the employee acknowledge that what they did was wrong.

Commissioner Norton asked if the settlements had been paid and the Director answered that it was recommended to the employees that the payments not be made until the commission had reviewed the settlement agreements.

Commissioner Norton asked what SDOT is doing to prevent this from happening in future and the Director answered that the department did some education around the issue and held an all staff meeting to address the policy.

Commissioner Norton asked if anyone accused act surprised that they weren't allowed to use the pass for personal vehicles and the Director answered, no, he did not believe so. Mr. Mayo stated that originally there was a claim that it was believed that the violation was okay, but there were nineteen or twenty people or so out of the twenty seven who were investigated who had no violations so the argument that everyone was doing it did not hold water.

Commissioner Brown asked if there were employment consequences as well and the Director answered that he did not believe there had been, but sometimes when the commission acts, there are additional consequences imposed by a department. Commissioner Taylor asked if this went into their public record, and the Director said no, the city agreed a long time ago this would not be part of an employee's file.

Commissioner Taylor asked if there were other departments who had similar vehicle and parking usages and the Director answered that there were, and Commissioner Taylor said she thought it would be a good idea to remind leadership citywide of the policy, and the Director agreed.

The Chair asked how the fine to be assessed was agreed upon, noting that it was obviously double the normal parking rate, but wondered why it wasn't triple or some other multiplier and the Director answered that there were other vehicle use fines in the past that were similar and this seemed a consistent and reasonable response in this scenario. The Chair asked if there were adverse impacts to the city by virtue of the personal vehicle being parked instead of a city vehicle and the Director answered that he wasn't sure, the garages are rarely full, but it could have shut out someone who had legitimate city business. The Chair asked what would happen if this happened again hypothetically in the future, and the Director answered that the fine would be higher.

Commissioner Norton made a motion to accept and approve all three settlements, and the motion was seconded by Commissioner Carter. The motion passed unanimously, with no abstention, and no opposition.

4) Lobbying Law

The Director introduced a decision memo; this is the last step before Attorney Slayton would begin to draft legislation if the commission chooses to make changes to the lobbying law. Commissioner Carter noted that Mr. Mendoza brought this issue to the commission eighteen months ago, but he was not sure what the problem was that is being addressed, and asked if there was a chance of regulating without there being an issue. The Director noted there was an article in the Seattle Times highlighting ties between the Mayor's office and a consultant who was active in her campaign as well as lobbying on behalf of some clients in the city, so to what extent such a situation might be a problem is what is before the commission. The Chair offered that because there is no disclosure requirement currently, the question to him is not is there a problem that needs curbed, but is there good policy on a disclosure front, or in terms of prohibition, which may raise constitutional questions.

The Director noted that was an excellent segue and asked the commission if they want to regulate the lobbying activity of political consultants, which is what San Francisco does, or would they prefer an approach like that in Los Angeles, which would require additional disclosure of lobbyists who are also involved in political campaigns, or do neither. Commissioner Brown noted that San Francisco has a restriction, not just a regulation. The Director noted that yes, but the restriction was only with the elected officials for whom they consulted. Commissioner Norton said it seems difficult to know if someone personally provided campaign consulting services, and that could be quite a loophole. Commissioner Norton also

noted that when the discussion began, there were questions about a way to have more sunshine, without there being an onerous method of policing, such as ticking a box on a lobbyist report that indicates whether the lobbyist is meeting with a particular audience, and whether or not they also provided campaign consulting services.

The Chair noted that there was a similar issue with the sub consultants identified a few years prior. Commissioner Norton said that she wasn't sure if the problem identified a couple years ago was widespread, and she would prefer more disclosure rather than creating a new bureaucracy, the onus could be put on the lobbyists. Commissioner Norton said that the industry within the community at large who involve themselves in city politics is fairly small and they would know if someone was not being truthful. The Chair noted that he agreed and if there was a way to make it easier and more transparent for the public to understand who is involved in elections and who may potentially be influencing them, that is good policy, especially if the disclosure can be made in a simple way, rather than waiting until there is a problem.

Commissioner Taylor said that made sense to her and wondered if there were logistical issues, and the Director answered that this should not be too onerous but would probably require additional coding and so would likely ask that such changes not go into effect until after the elections this year.

The Chair said that there was an opportunity to make it consistent with what the state did regarding disclosure of contributors to a political action committee up to a certain threshold. The Chair also noted this year the Public Disclosure Commission (PDC) is working on implementing regulations and he would like to look into that further and the Director concurred. The Director asked if there was guidance on question one. The Chair offered that he did not hear any support for a San Francisco type proposal. Vice-Chair Rehki said that he was for disclosure and

transparency rather than prohibition at this time. The Director asked if there was support for Commissioner Norton's idea of disclosure of those who are being lobbied? Commissioner Norton clarified that she would ask that the offices be disclosed of those who have been lobbied who are councilmembers, elected officials, department directors, deputy directors, etc., and the commission could decide how far to go.

Commissioner Carter asked that if a lobbyist has three clients would the disclosure be for each of the clients? Commissioner Norton agreed, yes, each group that is hiring the person to lobby would get their own report. Commissioner Shordt asked for clarification that there is no current disclosure of what is being lobbied and who is being lobbied and the Director answered that is correct. Commissioner Brown noted that this could have some nuance, as to whether each individual person rather than departments would be identified, such as if you are going to a 10 person meeting and the lobbying arises, would every attendee in the meeting be listed or would the departments only be disclosed.

The Chair would like to look at the disclosure options and in particular in light of the second question, of whether someone is providing an administrative action instead of a legislative action. Mr. Slayton suggested that it could be considered rule making under the administrative code of the city which means that a rule that applies to the public at large would go through a process which would be grounded in a city ordinance and lobbying done to influence such administrative rule making, which would not be quite as broad. Commissioner Norton asked if all of that was theoretically public and Mr. Slayton noted that there was public comment and a process but that doesn't rule out meetings on the side. Commissioner Carter noted that there used to be reporters and newspapers who would cover this eagerly and that is no longer the case. Commissioner Carter also supported rule making as being one of the areas that is

disclosed. Commissioner Brown said that he thought a broader definition might be a good starting point from the perspective of the public, because the administrative matter vs. city matter vs. legislative matter definitions are not obvious to the public, and the public wants information about who is lobbying who. Mr. Slayton offered that the more you expand the definition, the more important it becomes to define what it means to be paid to lobby vs. what is a petition before the government in terms of who is paid and who is not paid. Mr. Slayton offered the example of a non-profit who wants to lobby the city council about the homeless, and even though the bulk of their business is not to lobby, the fact that they are paid could involve them in lobbying registration. Mr. Slayton also noted that if there were going to be exemptions, then there would need to be rules about how those exemptions would be made.

The Chair noted that there could be specific applications for a particular permitting action, like a particular property, and council is interacting with people on behalf of that particular property and he isn't sure that is the appropriate audience for the regulations. Mr. Slayton noted that this wider definition could be more difficult to draft and more difficult to define, and rule making is already defined in the code and could be easier to draft.

Commissioner Norton said that it would seem logical that the public would care about who is going into council to talk about certain properties. Mr. Slayton said that until we shine the sunlight, it will be hard to know who is lobbying and on what matters.

Commissioner Norton said she believed starting broad and then narrowing the focus would be a better approach than trying to expand on an ad hoc basis. Commissioner Brown asked if there were ordinances that exempt non-profits and whether the SEEC would like to exempt groups like non-profits. The Director answered that the exemptions are generally from fees, and there may be a specific exemption in Los Angeles from registration and reporting. The

Director noted that ten years ago when the lobbying law was passed, the non-profits were intentionally covered and there was a lot of education for that community and they do currently file. That the PDC requirements are just legislative was clarified by Commissioner Brown and the Director. San Francisco just exempts the non-profits from the registration fee, but Commissioner Norton noted that there were organizations who lobby on behalf of non-profits, and those type of organizations would be required to register.

The Chair asked if there could be two proposals drafted; one with a broader definition, and one more narrow. The Director asked for clarification on what exactly counts as lobbying. It appeared that there was consensus that we do not want to consider a situation where someone is getting a permit at a permit counter to be lobbying, but if you are instead contacting the head of the Department of Construction and Inspections for a private meeting, then that could be considered lobbying. The Commissioners debated whether someone who is staff who runs a permit counter is approached by the public can be considered lobbying as opposed to speaking to the director of the department regarding a permit. Commissioner Brown said he wasn't sure that we need to include staff at the permit counter as being lobbied to, and Commissioner Norton agreed. The Director offered that it could be the distinction between discretion and following established policy. The Chair asked if there was a clear way to define the people, such as high ranking officials and Mr. Slayton said that they could look at the Los Angeles definition and see what makes sense.

Commissioner Norton says that if the form is updated by a simple check box and a line to report who was being lobbied then she is not sure she understands why there should be a charge. The Director noted that when this was originally proposed there were enough resources within the staff to work on the lobbying in addition to campaign finance. However, the demand on

resources has grown and the fee structure could help defray the costs if there is a need to hire another person to administer an expanded definition of lobbying. Commissioner Norton asked what was being charged currently and the Director said there was no charge currently. The City of Seattle and Jacksonville were currently the only two cities who do not have any fees or charges associated with lobbying registration. The Director said that the City Budget Office would like to have the position offset entirely by fees, but is not sure that this could be accomplished, but it could at least partly offset the cost of a new staff position.

Commissioner Brown asked the Director for his thoughts about why a flat fee or a graduated fee based on whether someone has multiple clients would be better and the Director answered that those with more clients are more difficult to administer, because they are more work and there are more reports to review. Commissioner Carter asked what the population of lobbyists was currently, and the Director answered that there were roughly a hundred active lobbyists. Mr. Slayton noted that if the scope of what is considered lobbying is expanded then it would likely also expand the pool of active lobbyists. The Chair noted that there did not seem to be any opposition about the fees. Vice-Chair Rehki asked how much staff add would be required and the Director said it was difficult to answer. For example, if the commission wants to go to a policy similar to Los Angeles, then it would require more staff time, but if not, then it could be a quarter or a half Full Time Equivalent position. The Chair was curious if there were any constitutional consequences to distinguish between for profit and non-profit businesses. Mr. Slayton answered that there is a Washington State law precedent, but not necessarily constitutional; it would require a reasonable basis, but the question is whether it is considered a tax or a fee. The City does not have any taxing authority unless it is granted by the state legislature explicitly, but they have a regulatory police power. If the money takes on the nature

of just getting revenue, then it becomes a tax, and the city doesn't have the authority to tax, and it will be invalidated. The fee is related to the burden or the service being provided to the fee payer. A precise definition is not required, but the fee has to be related to the burden or the service, so different fees have to take that into account.

The Chair asked if distinguishing between a 501c(3) would be firm ground and Mr. Slayton answered that it would be a good basis for a tax policy. Courts have upheld those types of distinctions in taxation, but when it is a question of regulatory police power, then Mr. Slayton would recommend executive session for further discussion.

Vice-Chair Rehki believes there should be a fee charged, but isn't sure what that fee should be based on, until the burden and benefits and the scope of the work is determined along with the structure of how the fee is charged. Commissioner Norton agreed. Commissioner Brown would default to the position of exempting the non-profits.

The Director then brought up the question of the grassroots campaigns and whether the SEEC wanted to have regulation of grassroots lobbying similar to the state law or looks like what is in place in San Francisco or Los Angeles or not at all, which ties into the final question of the thresholds for filing. The current threshold is that lobbying reporting is not required if there are less than four days within each quarter spent lobbying. The only place someone has to register their activity as lobbying is when the communicant goes to the official's office. All other communication is not tracked easily and in other jurisdictions there is a compensation-based option, but that is not the same method as the PDC. The only way to really determine someone lobbied more than four days is onerous. The Director said that this threshold could steer someone away from a regular lobbyist in order to stay below the threshold. Commissioner Norton would

like the threshold to be on a quarterly basis, instead of per month, especially if compensation based.

Commissioner Shordt said that he is having trouble figuring out how to structure this in the absence of a definition of what falls under lobbying. The Director answered this was in effect any compensated attempt to influence legislation is considered lobbying. The Director noted that the state law was used as a model when the City's lobbying law was first passed. The Director said that he would look for source materials from the time the law was passed for Commissioner Shordt.

The Chair offered that a financial threshold could be very arbitrary, and Commissioner Norton noted that it could be either or, and the Chair concurred and asked if there were thoughts from the commission on whether grassroots lobbying should be incorporated. Commissioner Brown said he liked following the state and including the grassroots, and the Chair agreed. Commissioner Carter asked for an example of grassroots. The Director said the billboards purchased for the Soda Tax were an example. Since they were not making direct contact with elected officials, but were making direct contact to the public, it was considered grassroots and there was no registration required.

The Director responded to the question of Commissioner Taylor regarding whether if there was a big neighborhood party to band together for a particular cause, if it would count as grassroots lobbying, and the Director answered that was one of the concerns that kept SEEC from regulating the grassroots at that time the law was originally passed. The Chair thanked the Director for his efforts on the lobbying over the several months this has been under consideration.

The Chair asked counsel if there was a process for reconsideration of a prior decision and Mr. Slayton said there was no clear procedure for a reconsideration, and the SEEC decision is final and the code required speed. Mr. Leman asked if there was going to be no reconsideration of the submission he made, and the Chair confirmed that understanding and let Mr. Leman know he was not expected to provide comment.

Discussion Items

5) I-122 report

Program Manager René LeBeau provided an update on the Democracy Voucher Program beginning with some updated numbers; noting that after filing week and the final deadline to sign a pledge to participate in the Democracy Voucher Program there are 54 candidates running and of those 42 are in the Democracy Voucher Program. Ms. LeBeau noted that 29 of the program participants have qualified to receive funding and two more are pending qualification. As of 2017 only four candidates had been qualified at this time. Ms. LeBeau noted the program has distributed just under \$1 million and invoicing takes a few days. At least six candidates have already reached the \$75,000 campaign valuation limit for the primary.

Commissioner Norton asked how many vouchers have been used, and Ms. LeBeau answered that we have received sixty five thousand vouchers back as of today and about four hundred and sixty five thousand residents were sent vouchers and nearly seventeen thousand residents have returned their vouchers, and the number of vouchers being misassigned is very small.

The Chair asked if it could be gleaned from the data whether those who are returning their vouchers are returning most of their vouchers and Ms. LeBeau said most people are sending

in all four vouchers, but we haven't yet analyzed whether they are assigning all four to a single candidate. Ms. LeBeau also noted that since this race is district based, and the vouchers can be assigned across districts, there will likely be some interesting numbers revealed once the data is studied.

Ms. LeBeau noted that 8,000 voucher assignments have come through the online portal, which is 2,000 residents, and that there have been a significant amount of requests for replacement vouchers, and roughly half of those replacement requests are using the portal.

Commissioner Norton asked if there was a way to know where the vouchers are coming from, and Ms. LeBeau said at last check there was a higher return rate from those districts who do not have an incumbent. Commissioner Brown asked if the data was publicized on the website and Ms. LeBeau offered that yes there is a snapshot dashboard, but the numbers are not right on the front page. Rene said that they are doing a push in June through social media about the main questions that people still have about the vouchers.

Commissioner Carter asked if we are all set for the independent expenditures that may be moving candidates to release and the Director answered that four candidates have already been authorized for release. The Director noted that since the standard is inadvertent and minor, and now that the precedent has been set, that precedent is being followed and it is going smoothly.

Ms. LeBeau offered that languages besides English are being increasingly used; the requests have doubled from last year. Also, 51 applications for those who have opted in have been processed this year, and when we compared the voter registration, there were about 30 opt-ins that became registered voters.

Commissioner Norton asked if there was any way to tie the work from the community based organizations (CBOs) to the vouchers coming in, and Ms. LeBeau answered that it could be analyzed from the return rates and when the CBOs had events and whether there could be any connections or correlations there. The CBOs are reporting the types of contacts they are having, and the ones that have reported so far are reporting at least 5,000 contacts, through small events, door knocking, tabling, emails and phone calls. There are also more one on one meetings with the CBOs and there are ongoing conversations about the political process in addition to how the vouchers themselves work. Ms. LeBeau said there are a lot of activities coming this in the next month, but the CBOs have done over 100 outreach events so far. Adding Mergitu Argo has been great for internal outreach, and staff have worked 27 events, and the program is partnering with the Arc of King County, a non-profit group, for some future events.

The Chair asked if anything was not going well and Ms. LeBeau said the volume of vouchers being returned has been significant, and she has accordingly increased quality control around processing errors and simplified processes where possible. There have also been complaints around the qualification process, similar to those in the past, but there are several candidates who have qualified so it does not appear to be too onerous. People are learning to use the vouchers and ongoing education regarding the program will continue.

7) Executive Director's report

The Director noted that the Financial Interest Statement process has been concluded for the city employees, the final city employee filed on April 29, 2019. There are a few stragglers still for the Boards and Commissions, but they are almost done.

The next scheduled meeting is July 3, and the Director asked if the commission would like to reschedule, and the commission concurred, so the following week will be targeted.

The Chair asked if the commission would like to discuss the public comment period at the next meeting, and specifically if the commission would like to tailor the public comment by requiring that the speakers be held to commenting on an agenda item. Mr. Slayton said there was no requirement to have a public comment period at each meeting, but that the commission could have public hearings on topics as desired. The discussion will be continued at the next meeting.

The Regular Commission meeting of June 5, 2019 adjourned at 5:29 p.m.