

Seattle Ethics and Elections Commission Regular Meeting

September 9, 2020

A special meeting of the Seattle Ethics and Elections Commission (SEEC) convened remotely. Commission Chair Nick Brown called the meeting to order at 4:03 p.m. Vice Chair Richard Shordt, and Commissioners Brendan Donckers, Hardeep Singh Rekhi, and Susan Taylor were present electronically. Commissioner Bruce Carter joined at 4:07 p.m. and Commissioner Judy Tobin joined at 4:40 p.m. Executive Director Wayne Barnett was joined by Assistant City Attorneys Gary Smith and Teresa Chen, along with staff members Chrissy Courtney, Polly Grow, René LeBeau, and Annie Tran.

Action Items

- 1) June 10, 2020 special meeting minutes**
- 2) August 5, 2020 regular meeting minutes**

The Chair opened the meeting with the first action item of the June 10th minutes, which were moved for adoption by the Vice Chair, seconded by Commissioner Taylor, and passed unanimously. Commissioner Taylor then moved to approve the August 5th minutes and the Vice Chair seconded the motion, which passed unanimously. Commissioner Carter joined the meeting just after the adoption of the minutes.

Discussion Items

- 3) Maximum campaign valuations**

The Chair asked the Director to introduce the first discussion item. The Director stated that the BERK report, based on surveys, did not come up with a firm opinion from candidates or the public either way on raising the campaign valuations, but the commission had indicated interest in more information on the topic because over the last two election cycles the spending

and contribution limits were lifted for almost every candidate. Looking at only the top two candidates in each district who reached the general election, except for District 3, which was an outlier with very heavy spending by both Councilmember Sawant and challenger Egan Orion, the other six seats each spent roughly 29% over the maximum campaign valuation (MCV).

In 2017, in City Council Position 8, which was the one open seat, both of the top two candidates spent roughly 36% over the MCV, and the candidates for city attorney spent roughly 25% over. There was only one race where there was a significant underspend in 2017, but there are usually overages. The Director asked the commission what, if anything, they want to do in the face of the fact that there is not much public sentiment for raising the limits, even though the limits have been routinely raised in the last two cycles by releasing the candidates.

The Director also noted there would be budgetary impacts if the limits were raised. The law currently requires there to be set aside money to fully fund six candidates in the primary and two general candidates exclusively through democracy vouchers. In 2017, 38% of that set aside budget was spent, however the mayoral race was not eligible for democracy vouchers in that year. In 2019, which was a very high energy election cycle, only 58% of the set aside budget was spent. The Director said that he thought that if there were increased limits, it would not bust the budget, and it came down to whether the commission would like to raise the limits to reflect what it was actually costing to run a competitive campaign, which was what was used to initially set the limits. The Director also asked the commission if they would want to raise the limit prospectively for the mayor's race, since that race has not yet been in the program.

The Chair commented that there was both a policy question and a logistical question, since they are consistently in the position of responding to requests to lift the limit, and then the policy question of whether the goals of the program were being accomplished. The Chair asked

the Director whether he had any thoughts about the existing ease of operation in terms of the logistics. The Director answered that he believed that one of the big holes in the memo presented to the commission, is that while the two candidates in the general election overspent the limits, independent expenditures (IEs), which cannot be controlled by the commission, are likely to lift the limits routinely. Raising the MCV may be something of a palliative, but there are still likely to be regular requests from candidates to raise the limits due to IE spending. The Chair asked if the 25% proposed raise was something that accomplished a substantial portion of the current status, and the Director answered yes, that it reflected what the two general candidates spent to be competitive and to win. The Chair asked for comments or questions from the commissioners. Commissioner Rekhi said he had no questions right now but did think that they need to do something other than what they had done the last few years. Commissioner Donckers said that it was a difficult issue and as a non-elected body he hesitated to get far out in front of what the public seems to be doing, but he wasn't sure whether there it was a feasible solution to put forth recommendations to the City Council as they are going up for reelection. Commissioner Taylor said that she wondered what they would be signaling, and was concerned about sending an inadvertent message, if it is simply a logistical issue versus having any real impact in terms of diluting the IE influence, which she did not think it does, so she was not sure what message the commission would be sending. Commissioner Carter asked if the candidates expressed any view on this, his recollection was that they seemed okay with the numbers last time and asked the Director to confirm. The Director said that he thought one of the reasons the candidates were satisfied with the limits was because they could get out of it very easily. The Director said the limits give people the impression that we are striking a blow at heavy campaign spending when that is not the reality. Commissioner Carter said he didn't see why they should raise the limits

unless the candidates complain. Commissioner Rekhi said that he understood but asked what was the point of the program if they let the candidates out of the limits every time. The Director said that one of the goals of the program was to increase the number of candidates, and if the candidates did not have a release mechanism to run close with a well-funded campaign, then they would be less likely to participate. Commissioner Donckers said he didn't think that they should undervalue that the program has broadened participation, albeit incrementally, but there were problems with getting big money out of elections. Commissioner Rekhi said that he wanted to find ways to make the program more important and increasing the limits would go to the goal of increasing participation, since the candidates had been collecting vouchers that they were not able to use. The Chair said he agreed and that even though there hasn't been a notable push from the candidates or the public, by raising the limits, even though that does not totally solve the problem, it could help maintain or increase participation, and in his mind could add more value to the program itself. The Chair continued that if by increasing the contribution limits by a certain percentage would decrease the frequency that candidates are released from all limits, then that could be a net benefit. The Chair said he could see Commissioner Rekhi's point of trying to maintain participation and asked the Vice Chair for his thoughts. The Vice Chair said he was inclined to increase the limits, because people were attempting to use their vouchers, but the campaigns couldn't use them, so it could have a chilling effect on those who want their vouchers used and then cannot. The Vice Chair asked if all candidates were released from spending limits in 2019, and the Director said yes, all except for one, in District 5, which he believed was also the only race in the primary where the limits were not lifted. The Vice Chair said that increasing the amounts could aid those candidates who do not have outsized spending on their behalf. The Vice Chair noted that if the limits were raised, then it may also increase candidate participation

since they might be less likely to be outspent by a large amount, and could provide an early advantage to build the campaign, which campaign staff said was important on the front end. Someone on the fence about running for public office, knowing that they would have increased contributions early on might generate participation in the program by candidates and participation by those folks who would use their vouchers. The Vice Chair said he was inclined to wait and see until after the next mayoral race, in regard to those limits.

The Chair asked the Director procedurally, if the commission agreed to raise the limits, how that would interplay with the City Council's budgeting process. The Director answered that there would be no impact, since the program has dedicated funding set aside and given past program spending patterns, it was likely that there would be enough money through to the 2025 election cycle. The Chair said that based on the comments, it seemed there was a split about the timing of increasing the limits, and in his mind, it made sense to raise the limit for the city council races, but not for the mayoral race, since even a 25% increase might not make a substantive difference in that race. Commissioner Taylor said it was helpful to hear others' views and asked if there was any reason to think that by raising the maximum that the IEs would go even higher, or were they not linked at all. The Director said that he would speculate that those who made independent expenditures in 2019, might be re-thinking their strategy, since they spent heavily, and those IEs were not, for the most part, successful in achieving the electoral outcome they hoped to achieve, so it is uncertain whether this change would drive more money into IEs or not. Commissioner Carter asked if the commission were to increase the limits, is it the hope that will increase the breadth of participation, so as to have a broader base of participation. The Director said yes, it would mean more fundraising inside the program, and more vouchers that people can use. Commissioner Carter said that he would support it if it meant more people

using their vouchers. Commissioner Donckers asked whether the data was reflecting that all the candidates in 2019 were more than 25% over the limit, and if the proposed 25% increase would mean that the commission would have to come back to revisit another increase. The Director said yes, based on historic trends, since the 2019 elections were more expensive than the 2017 elections, and every year the limits are to be reassessed. Commissioner Donckers asked if the recommendation was intentionally lower than the overspend, and the Director answered that the 25% was chosen as an easy number for the public to contemplate, and as you raise more money within the program, costs to raise money go down, as a candidate.

The Chair asked procedurally what would be deadline for approving raising the limits. The Director answered that sooner than later would be better, by the October meeting there could be a rule to approve, and if not by October, then definitely by the November meeting. The Chair's recommendation would be to increase the limit by 25% for the City Council races only. Commissioner Carter agreed. The Director said he understood not raising the mayoral limits, but asked about the city attorney race, where the limits were also exceeded in 2017. The Chair asked if that was a race where one of the candidates was not in the program at all. The Director agreed and said that previously the amounts were pegged to the at-large city council races, for the sake of voter ease, so if the city attorney amount is not raised, there would be four different limits. The Chair said he wasn't sure if there was enough data on the city attorney races, which seem like a unique beast, but given the information so far, he would be inclined to keep it aligned to the at-large council positions. The Vice Chair said he would support including the increase for city attorney and city council races, since they were both citywide positions, and likely required similar outreach. The Chair made a motion to draft a rule to the effect that there should be a 25%

increase to the limits for the city attorney and city council races. The motion was seconded by Commission Carter and passed unanimously.

4) Rule regarding releasing participating candidates from the maximum campaign valuation

The Director stated that this rule was an attempt to cure a drafting issue regarding the release processes; if a candidate requests release from the spending limit in the primary, long before they even get to the spending limit, then they would have more money to spend in the general than they would have otherwise. These four rule options give the amount over the spending limit as the starting point for the general. The Chair said that he recollected that this was an issue in the past and asked the Director to point out the differences in the drafts. The Director said that he believed they were all just different ways of saying the same thing, but that version four, drafted by Teresa Chen, would be the best option. Commissioner Tobin joined the meeting. The Chair asked if there were any comments from the commissioners about the proposed drafts. Commissioner Rekhi said that he believed draft four was the best option. Commissioner Tobin asked if they were speaking about draft four, and that was confirmed by the Chair. Commissioner Rekhi said this was dealing with the banking issue that came up, and some issues related to that which were complicated. The Chair asked if there was a motion. Commissioner Rekhi moved to adopt draft four to go to public hearing, which was seconded by Commissioner Tobin. The motion passed unanimously.

5) Abbot Taylor's proposed Democracy Voucher Program rule

The Director asked if Mr. Taylor was present, and Mr. Taylor affirmed that he was, and the Chair asked Mr. Taylor to walk the commission through his proposed rule change. Mr. Taylor said he wanted to acknowledge an error in his initial letter and apologized. Mr. Taylor

continued that he was happy to be there and to see that the commission was taking steps to update the clarity and consistency in the rules. Mr. Taylor continued that it was a little unfortunate that this had taken so long, since the Seattle City Clerk recorded the final action on the ordinance that updated the code on July 6, 2018 and there were many references in the rules that were not updated since then. Mr. Taylor said that the update to Rule 16, if it occurs, would be a little over a year since the difficult discussions regarding this issue. Mr. Taylor said that as an example of a more timely and responsive process, earlier this year the Washington State Senate passed SSB 62152 on March 10th, which was signed by the Governor on March 25th with an effective date of June 11th and the Washington State Public Disclosure Committee (PDC) issued draft emergency rules on May 14th, met on May 28th and adopted the rule changes that day so that they were in place at the time the code changes happened. Mr. Taylor stated that he proposed this rule so there isn't a disconnect between the Seattle Municipal Code (SMC) and the SEEC rules, and as an incentive for a timely response to code changes.

The Chair thanked Mr. Taylor and then Assistant Attorney Teresa Chen was asked to provide a response. Ms. Chen said that there were two types of changes being proposed, one setting a two month window for the SEEC to update their rules once the change is made to the SMC, and the other is to void any changes that are not made within the two month window. Ms. Chen noted this could be a practical challenge for the commission, as they meet only once a month, and since there must be publication of notice and public comment of proposed rule changes. The Chair asked how the current SEEC meeting schedule compared to the PDC's schedule. The Director said he believed the PDC also met monthly, and Mr. Taylor concurred. Ms. Chen continued that the second part of the proposed rule said that whatever commission rules are not revised to correct amendments to statute within the two month window should be

removed until the rules are revised. Ms. Chen stated that on a very fundamental level that is not how statutes, city code or rules operate. Ms. Chen then showed a power point slide, showing the Revised Code of Washington (RCW) 1.12.028 - Constructions of statutes - Internal references as including amendments thereto, which indicated that if a statute refers to another statute of the state, the reference includes any amendments to the referenced statute unless a contrary intent is clearly expressed. RCW 1.12.028 is to be applied equally to municipal ordinance and state statutes, so the EEC Rules' references to outdated SMC provisions should be interpreted to include amendments to those outdated SMC provisions unless expressly stated otherwise. Ms. Chen noted that even on the municipal code website, there are certain changes that have not yet been incorporated, and there are notices on the website to that effect, showing that there were adopted ordinances not yet codified and providing links to the legislation, and it was suggested that a similar practice could be adopted by the SEEC.

Ms. Chen also pointed out that the RCW is revised twice a year based on sessions or when there is a ballot measure, however the SMC is revised any time the City Council passes an ordinance to amend the code, and that does not always get incorporated online immediately as some ordinances may require collective bargaining processes, or have pending litigation, so there are practical and usual reasons why the SMC, and as a result the rules, are not updated quickly. The way that council bills are drafted to clearly identify the amendments should allow the rules to continue to be read, but the question is whether the rules readers can go through the amendments and know how to read the strike outs and underlines.

The Chair thanked Ms. Chen and said he was sensitive to Mr. Taylor's general concern that the commission is not acting quickly enough to respond to changes to the code and asked the Director, as a practical matter, if there was a general sense of timing reflecting changes in the

code. The Director said that the proposed changes discussed to Rule 16 today were due to the rule not being updated before it became an issue but was not something that would have been cured by the proposed rule. The Chair said that the delay in changing that rule was not due to a change in code, so Rule 16 was different to him, because it was more about how the code was being implemented, but he asked when the council changed the code, how responsive was the commission to those changes in the code. The Director said that this was really the first time there were substantive changes to the law that have necessitated changes to the rules in his 15 years with the commission, where the reference has been outdated. The Director said that he agreed they could be timelier, but he wasn't sure that the proposed rule was the most practical way to accomplish that goal. The Chair said that he agreed, and in his individual perspective, the second part of the rule did not make sense to him. The Chair asked whether procedurally the commission would be notified when the council makes changes to the ethics code. The Director said that he didn't think there was ever a chance of the commission missing a law change, and most changes to the code have been driven by recommendations from the commission.

The Chair asked if there were any questions for the Director or for Mr. Taylor by the other commissioners. Commissioner Carter said he thought the notion of voiding was horrible public policy, and the error in not moving as promptly as they might, should not penalize the program by throwing out portions of it due to the commission's oversight. The Vice Chair said he agreed with Commissioner Carter that the punitive nature of the rule did not make sense, but if there was no legal reason prohibiting it, he didn't see why they couldn't endeavor to have an explainer on the website to show what the new rule references would be, which would allow for enough time to change the rule on a reasonable basis. The Vice Chair said that notifying people of the changes would solve the problem, rather than mandating that the commission do

something within two months. Commissioner Taylor said that she was sensitive to Mr. Taylor's comment, and was a little embarrassed that the commission was out of date, and but she did feel like the proposed rule was a bad idea and she was happy to hear the Director's commitment to stay on this, now that there may be more changes, so to her it seemed like a process fix rather than adopting a new rule. Commissioner Rekhi said that he agreed it was a process change, and he thought the rule was overly harsh, but he would support posting something on the website, because references change sometimes, and it's just a process to get it all done. The Chair asked for any other questions or comments, hearing none, he asked Mr. Taylor if he wanted to respond or raise any additional issues. Mr. Taylor said that he was glad they were thinking about these deficiencies and he wanted to point out that if the law was only changed once during the Director's tenure, then updating it that once could have been smoother, and if Rule 16H had been updated immediately after the code was changed in 2018, perhaps they would have realized the structural deficiency then. Mr. Taylor said that if section two of his proposed rule was too offensive that could certainly be stricken, but there should be a set time frame for these rare occasions when the Code does change, and it is important to get those rules updated and reviewed when the code changes. Mr. Taylor thanked the commission for hearing him out. The Chair thanked Mr. Taylor for bringing this issue to the attention of the commission, and said that there would be more attention paid to this and to due process by both staff and the commission.

6) Democracy Voucher Program report

René LeBeau, the Democracy Voucher Program Manager, gave an update on the program. Ms. LeBeau stated that the next big event coming up for the program are the Requests for Proposal that are due on September 18th, and two online trainings were conducted, walking through the program, what was seen in 2019 outreach and the goals for 2021. The program has

also secured proposal reviewers from the Department of Neighborhoods, as well as a youth representative from a local high school, and a reviewer from the Office of Immigrant and Refugee Affairs joining the voucher staff in the review of the submitted proposals.

Ms. LeBeau stated that the vouchers will be mailed on February 9th, 2021, which will be a Tuesday, since the BERK report really didn't indicate the need for any major change to the mailing date. Ms. LeBeau noted that the program was continuing to register residents for online voucher usage, and answering inquiries from the public, and preparing for a late fall candidate launch with a lot of the materials as well as making any updates based on the rule changes from the commission. The Chair asked if the participation by the high school student was solely to appease Commissioner Carter. Ms. LeBeau said yes and no; Commissioner Carter was great at reminding us to get more voices at our table, and this youth was actually working with the Human Services Department in another capacity, so we are excited to give this student a chance to work with another city department. Commissioner Tobin asked whether the money set aside for the community based organizations could be better spent by using those funds to have individuals go to the communities over and over again to explain the program. Commissioner Tobin said she had worked in the communities that the program was trying to reach, and wondered if the commission had thought about whether it would be more effective for a single person to go and talk to many people than to try and get many people to come to talk to one person. Ms. LeBeau said that the way this funding opportunity worked last year was by providing funding for local community organizations, and the local leaders in those communities, to provide a wide range of outreach activities. The communities themselves are conducting the outreach and the program is just facilitating this work as a contract opportunity. Ms. LeBeau said she wasn't certain if that addressed the commissioner's question, and

Commissioner Tobin said that answered her question, and she thought the voucher program report from BERK was really interesting. Commissioner Tobin said she knew it could take a long time to get someone to change their mind, and that it's such a great program, and she offered to volunteer her time to outreach as well. The Chair asked if there were any other questions for Ms. LeBeau, and there were none, so the Chair thanked Ms. LeBeau for the update.

The Chair said that Ms. Chen had another point to make on the previous agenda item, regarding Mr. Taylor's proposed rule change. Ms. Chen said that she wanted to bring the commission's attention to Rule 1F, which addresses the process for petitioning for rule changes. For proposed rule changes, there are notice and publication requirements, but they do not require a hearing, and the commission is able to take action in accordance with the commission rules. Ms. Chen stated that the commission can deny the petition within 60 days of the hearing, in writing, stating reasons for the denial or they can act on initiating the rule making, so the appropriate action at this time would be to ask staff to act in accordance with the commission's wishes. The Chair asked staff to provide the denial to Mr. Taylor in writing, based on the comments from the commissioners today. The Chair thanked Ms. Chen and said that they would get the denial to Mr. Taylor in less than two months.

7) Executive Director's report

The Chair moved to the Director's report which began with the new lobbying legislation. The Director noted that there was a recent Seattle Times editorial about lobbying, but even before that came out the Director was in talks trying to get the lobbying legislation on the City Council agenda. Due to competing and pressing issues it looks like it will be December and post-budget before there will be a City Council hearing on the new lobbying legislation.

The Director then welcomed Commissioner Tobin to her first meeting as an official commissioner. The Director said that he also been in touch with the Boards and Commissions liaison in the Mayor's office to remind them of Commissioner Donckers' term having ended, and Chair Brown and Commissioner Carter's terms expiring at the end of this calendar year. Commissioner Carter said he would not be standing for reappointment, and having done three terms, he planned to hand the opportunity off to somebody else.

The Chair said he would appreciate it if the Director would send the editorial on the lobbying law around to the commissioners. The Chair also thanked the Director and the commissioners for keeping their terms in mind and said that for potential vacancies if there are names of people who are interested in replacing members, then those names can be sent to the Director who will forward them to the appointing entity.

Commissioner Carter said there was some kind of enforcement action pending with reference to Councilmember Sawant, and it was passed forward, but that matter has now been six or eight months, and he thought they should try to get that determined. The Director answered that the commission's rules do not allow for a remote enforcement hearing, so that matter remains on hiatus, because it cannot be taken up virtually based on the rules currently. The Chair thanked Commissioner Carter for bringing up this issue, since it appeared that we will be working remotely for several more months, and rather than delay that matter, it might be worth considering an amendment to that rule. Assistant Attorney Gary Smith said that this was something that could be done, but there were some practical considerations, such as administering oaths remotely and questioning witnesses, but they are willing to work with the commission to see if there would be a path forward. The Chair said that he would like to know what the options are for the commission for future proceedings, and it might be useful to have

that information since the likely result of this Covid environment moving forward is to see more legal proceedings in virtual meetings. The Chair asked if there were any other questions.

Commissioner Carter said that he wanted to know how the lobbying law from Senator Carlyle at the state level, was similar to the one proposed by the SEEC. The Director said he did not know how they compared. The Chair said that he believed there was a proposed cooling off period for state employees from lobbying the legislature, but he was not sure exactly how it matches up to the SEEC proposals. The Director said that under the current city code elected officials and highest paid members of their staff and department staff and their highest paid direct reports are all barred from lobbying for two years he believed, which he could confirm in an email for the commission. The Chair asked if there needed to be any conversation about the item under appeal and the Director said that they could not speak to it as it was still under appeal but wanted the commissioners to be aware. The Chair asked for any final comments or questions from the commissioners. Hearing none, the Chair thanked Commissioner Tobin for joining the commission, and said he appreciated everyone's participation, and safe wishes for Commissioner Taylor affected by the fires in Eastern Washington. Commissioner Tobin thanked the commission and said it was nice to be there. The first Wednesday in October, which is the 7th is the next scheduled commission meeting.

The Special Commission meeting of September 9, 2020 adjourned at 5:22 p.m.