

Seattle Ethics and Elections Commission Special Meeting

March 29, 2021

A special meeting of the Seattle Ethics and Elections Commission (SEEC) convened remotely. Commission Chair Richard Shordt called the meeting to order at 3:30 p.m. and Commissioners Bruce Carter, Brendan Donckers, Susan Taylor, and Judy Tobin were present. Vice Chair Hardeep Singh Rekhi was absent. Executive Director Wayne Barnett was present and was joined by staff members Chrissy Courtney, René LeBeau, and Annie Tran, along with Assistant City Attorneys Teresa Chen and Gary Smith.

1) **Request to post Democracy Voucher Program Replacement form online**

The Chair stated that the purpose of this special meeting was to address the Democracy Voucher Program campaign replacement form and the request to expand the use of that form online. Staff put together a request for input from the campaigns, and the commission was also considering whether to issue guidance or to attempt rule making. The Chair asked the Director for a summary of what had occurred in the last few weeks, and the thinking behind the guidance, and then information would be requested of the campaign representatives in attendance.

The Director stated that the Mosqueda campaign requested the ability to post the campaign replacement form online, due to the social distancing restrictions of the pandemic. Staff reached out to all campaigns to provide input, and there was one campaign opposed, and one consultant opposed, because this was a competitive environment and had they known of the possibility to use the form earlier in the process, they might have changed their decision to participate in the voucher program. By entering into the race knowing that this form would not be able to be used online, they did not think it was fair that the form be allowed online now.

The other campaigns were in favor of using this form online. There were no campaigns that reported that using the form online would be a cost or burden to them. The Director noted that was a high-level summary, but all of the commissioners had the campaigns' input.

The Director offered guidance in the form of a proposal; First, to only allow the form to be posted on the campaign's official website and not on a third-party site. Since this form was to bring people together with the campaign, it should be an option only available on a campaign website. The second proposal was that the first signature line only could be set as a required field, so in order to use the form, a resident would have to use one voucher, but could not be forced into using more than one. Third, that the form should not be printable from the website, in order to help control the use of the form, and fourth, the form should not be sent by email; this form was developed to allow residents to assign their vouchers directly to the campaign they support when they are no longer in possession of their original vouchers.

Two of these four proposals were designed to help make sure that these vouchers were not being collected under the state bundling law and to avoid becoming antithetical to the design of the program. Two were to make the designs easier to administer; requiring the completion of the form before they are sent to the SEEC, and the names of the representatives who have accepted the form need to be supplied by the campaign, to ensure that landlords, or union leaders would not be able to share these forms without the campaign's knowledge.

Commissioner Taylor asked when the Director described the letter of objection from one of the campaigns that argued that it was unfair because it was a change in the rule, was it truly a rule or was it a policy or practice that was being changed. The Director said it was not a rule with a capital R, but it was a rule that was communicated to the campaigns that the forms were not to be posted on their websites. René LeBeau, the Democracy Voucher Program Manager, said that

yes, the intention of the form was discussed in trainings, and was addressed in the Candidate Toolkit, and this was the third year the form has been used under the same set of expectations.

Commissioner Tobin said that Sara Nelson said that she thought it was unethical because she thought it would be too hard to get the vouchers due to the pandemic. Commissioner Tobin said she wasn't sure whether there was a date certain to join the program because Commissioner Tobin didn't understand Ms. Nelson's argument. The Director said that he believed that Ms. Nelson saw that there were going to be challenges to gather the vouchers, and she now believes that she would be at a disadvantage because it would be burdensome to return campaign contributions that were raised above the maximum contribution limit that voucher candidates agree to when they participate in the program. Commissioner Tobin asked whether this was an issue, and the Director answered that those who already gave the maximum contribution would have to be refunded if they used vouchers and that would be a burden for the campaign.

The Chair asked what evaluation or decision point would decide that the social distancing was no longer necessary. The Director said that he assumed it would be an administrative order, something like the Governor's executive order, which would not require the commission to meet in order to repeal the guidance. Assistant Attorney Gary Smith said that the condition of the physical distancing and how that would be lifted could be tied to the City's definition of an emergency. The Director agreed, saying he was looking for some outside indicator that would allow for a lifting of the restriction automatically upon being triggered.

Commissioner Carter said he was quite concerned about the fairness and whether this could have been addressed earlier. Ms. Nelson stated that she relied upon our guidance and she might have changed her stance on participation if there had been a different position. Commissioner Carter said that it seemed like there was an incomplete response and there was

more feedback from the consultants than there were from candidates and he was troubled by the notion of being accused of changing the rules and he felt like this could have been anticipated. Commissioner Carter asked if there was a way to compare the difference in the time between this year and a previous year in terms of distributions. The Director answered that he believed that roughly half a million dollars had been distributed thus far, which was more than this time in the previous year. Commissioner Carter asked if any other campaigns had cried foul, and the Director said that the remarks that were received were generally in favor of the change.

The Chair said there were campaigns present and asked Katherine Bobman if she would speak on behalf of the campaigns. Ms. Bobman said that she was today speaking on behalf of Lorena's campaign, which is very much in support of using the form online, because they were at a competitive disadvantage, where one campaign was collecting in person forms within six feet. Abbot Taylor said that he thought it was covered last time, but he was representing the Mosqueda campaign today, and they were trying to do everything as safe as possible and to get this form to those who needed it. Mr. Taylor continued that one campaign he worked with in the past had started the race without being in the voucher program, but then decided to join, and it was a little bit of a hassle, but refunds were issued, and the qualifying process was followed.

Josie Olsen spoke as someone who was working with Colleen Echohawk and Pete Holmes and both favored using the form online. Ms. Olsen stated that in the past this specific use of the form was not the deciding factor for candidates to join the program, so if that was the reason a candidate would not participate in the program, it was her professional opinion that was a strange reason not to join. Ms. Olsen said they do not want to risk their campaign volunteers or their neighbors and the folks they may encounter by using the form in person at this time.

The Chair asked if anyone else would like to weigh in who was present from the campaigns. There were none and the Chair thanked those who provided input. Commissioner Donckers said that he thought the commission should be focusing on what was the right policy and there may be campaigns that are not happy with whatever was done or not done, and staff had done a good job to allay the fears and he supported taking measures to make vouchers more accessible to residents as long as they are safe and fair.

Commissioner Carter said that it was his recollection that if a person could not find their vouchers, then they could go to the commission's website and they can make a replacement request. The Director said that the form was designed in 2017 to allow for a frictionless exchange to allow a resident to give their vouchers immediately in person. Commissioner Taylor said that one of her inclinations was that if they thought the form was appropriate in 2017 then whether it is paper or electronic shouldn't matter as long as the security concerns can be satisfied, but she is also still wrestling with the argument that it is a change mid-stream.

Commissioner Tobin said that the original reason that these were invented was because it got the candidate out to see the people but now that they can't meet people, and she can see that as a big problem for now, and if the rule is changed due to the pandemic, then the rule should revert to use of the forms being an in-person event. The Chair agreed that if the commission decided four years ago to allow for this type of replacement option, whether it is paper or electronic maybe didn't matter, and he also wanted to respect the spirit of the program. The Chair continued that if campaigns were making the responsible decision to not interact in person, then he was inclined to allow for a short-term exception, but he did not want to make changes to the program long term, but only at this time due to the pandemic to encourage social distancing.

The Chair then asked counsel, based on early comments on how the social distancing guidance is phrased, how long it would take to approve the language from a legal perspective that should be made before deciding on finalizing something. Mr. Smith said that the temporal limitations could be worked on, and as far as the timing, the guidance was likely within the inherent powers of the commission and rulemaking was not required, but there was some usefulness in leaning towards emergency rulemaking, which would not require a 14-day delay, and the rule could be immediately effective upon filing with the City Clerk. There would need to be more information needed to describe the conditions that would make the issue an emergency rule, and this could be addressed at the next commission meeting if the commission so chose.

Commissioner Carter said that he was thinking again about Ms. Nelson and her reliance upon the guidance at a detriment to her campaign and asked if she would be able to refund some contributions and then still join the program. The Director said yes, and if she considered that to still be too burdensome, then that could go before the commission. Commissioner Tobin said that she thought the emergency rule making would be good, since the election year was moving quickly, and she thought action from the commission should be done as quickly as possible. Mr. Smith said that he would still recommend also having the typical procedure to allow for the comment process, because an emergency rule is only in effect within 60 days without a rule adopted through normal procedures. The Chair asked if the commission had to approve the rule or if the Director could issue the emergency rule. Mr. Smith answered that it would be the commission, and a rule could be published by Friday in advance of the regular April meeting. The code requires that the rule be published and open for comment for 14 days, which would not be able to happen before the next regularly scheduled meeting.

The Chair said it seemed like the emergency rule making could happen as soon as possible or they could go through the regular process to allow for the 14-day public comment window, or they could do both and issue the emergency rule and then follow up with a regular rule. The Chair said he was interested in the other commissioners' sense of which of the three options would be palatable. Commissioner Tobin said that she liked what the Director presented and if he could come up with something by next Wednesday to have a draft that could be put out for 14 days and then vote on it, she would prefer that in order to make the decision. If they were going to make a change, then she thought it needed to happen fast. Commissioner Donckers said that he would support having something that could be voted on by Wednesday, given the Director's preference. The Director said he thought that ideally it could be adopted as an emergency rule next Wednesday at the latest, and then the rule could be published through the regular process in order to get a permanent rule by the May meeting since the emergency rule would only be in place for 60 days. Mr. Smith said that would make sense.

Commissioner Carter said that if they were going to do this, then the duration of the emergency rule should be for the remainder of the election. The Chair agreed. The Chair asked the Director for his thoughts. The Director said this was an exception from the original vision of the program and the only reason to consider this change would be for the public health purposes. Commissioner Carter said he was looking for a definite end term, and the Director agreed, the linchpin of the rule would be for the form to be online only as long as the social distancing would be required and once that period ended the form should come down from the website.

Commissioner Taylor said she was thinking there should be a 48-hour warning window, but she realized it was unlikely that such a decision would be taken due to a sudden announcement. The Director agreed and said that there could be a time window of 48 hours after

the lifting of the social distancing order. Commissioner Taylor said that she seemed to find a way to print things that are not printable, and she was curious how carefully thought through some of these controls were. Commissioner Taylor continued that since the form should only be used for residents who intend to contribute to the campaign, but the form does not say that, was the request that the campaigns would be asking for confirmation that the resident intended to use their vouchers. The Director said that the purpose of the form was to mirror as closely as possible the original voucher, and as to the printing issue, there would not be a way to get around every possibility of printing, but the intent would be to make it harder.

Ms. Bobman said that the forms, if screenshot or something, would still need to come to a campaign for completion of the bottom portion of the form. The Chair asked if there was an option to have the campaign indicate how the form was collected. The Director said that staff would explore that. The Chair said moving smartly but expeditiously would be sensible and if they were going to be adopting the emergency rule while working on a more permanent rule, then it would be good to have the language in front of the commissioners for a few days prior to the meeting next Wednesday. The Chair asked Mr. Smith if that language could be ready by Monday, and Mr. Smith said that if that worked for the Director then Law could be ready.

The Chair said that made sense to him and he asked if there were any more questions or comments from anyone on the call and there were none. The Chair thanked everyone for their time and that by Friday or Monday, the commission would like to have the draft in order to review, and called the meeting to a close.

The Special Commission meeting of March 29, 2021 adjourned at 4:27 p.m.