City of Seattle
Ethics and Elections Commission

January 8, 2014

Re: WBI-13-0603-1 – Waivers of rental fees for use of DPR facilities

Dear *****:

Thank you for contacting the Ethics and Elections Commission (SEEC) with your concern that Department of Parks and Recreation (DPR) employees were failing to collect fees when renting facilities to favored users.

Based on your report, SEEC staff conducted an investigation of gym usage at five DPR facilities over an 18-month period. Staff found four instances in which charges were waived for the use of one facility's gym – the Southwest Teen Life Center's – in what appears to be a violation of DPR policies. That being said, our investigation did not find reasonable cause to believe that the usage violated the City's Ethics Code, or met the definition of "improper governmental action" under the City's Whistleblower Protection Code.

FACTS

We examined waivers of gym usage fees in the past 18 months at a sampling of DPR facilities: the Garfield, International District, Meadowbrook, and Yesler Community Centers, and the Southwest Pool and Teen Life Center. We spoke with several DPR personnel involved in facility use, including personnel in the Business Service Center, Recreation Division, City-wide Athletics and Community Outreach and Partnerships. We also spoke with employees conversant with DPR policies regarding community partnerships, facility contracts and DPR programming. Finally, we spoke with DPR employees staffing the above-named facilities.

Under DPR policies, basketball teams involved in the DPR basketball league – which runs from December through March – may schedule practice time in DPR gyms at no cost. Between December and March, organizations *not* affiliated with DPR that use the gyms for basketball activities must pay for the use of the gyms.

Outside of basketball season, DPR policy allows waivers of gym rental fees for organizations that are in a contractual relationship with DPR (such as Seattle Public Schools), and for organizations that have entered into an approved programming partnership with DPR (such as the Austin Foundation). Absent an approved contract or partnership, all use fees along

with a $25 booking fee are to be charged for gym rentals.[1] Facility coordinators or managers have some discretion to charge other fees involved in rentals, such as staffing and maintenance charges.

Working with DPR accounting staff, SEEC staff identified a total of four occasions between January 2012 and June 2013 when the Southwest Teen Life Center gym was used for basketball practices and games without the payment of use fees. Those four instances are detailed in Exhibit A.

In each of the four instances, the same DPR employee, Kiesha Cannon, waived the fees. When Cannon waived the fees for these organizations, she noted in the rental system: "Parks/Other Partnership Booking- 100%." SEEC staff found no evidence to suggest that the organizations had a contract or were partners that would allow them to have fees waived. In fact, two of the three organizations – both select basketball teams – had used gyms located at other DPR facilities in the preceding 18 months for basketball activities, and each time they were charged gym usage fees.

Cannon is a 13-year veteran of the department, and has used the rental booking system extensively. She told SEEC staff that the organizations were DPR partners, saying that while some partners had a formal written partnership, others were less formal and not in writing. She said that the boundaries between what qualifies as a partnership and what does not are not in writing and that each DPR facility "does it differently." (This is contrary to information provided by DPR management and the documentation reviewed by SEEC staff.) Cannon said she waived the fees for one of the select basketball teams because the coach had in the past coached in DPR's basketball league. She was unable to recall why she had waived the fees for the other select basketball team. The third organization, run by an acquaintance of hers, consisted of college-educated men mentoring youth. Cannon said the organization's mission qualified it as a DPR partner organization.

ANALYSIS

The Ethics Code bars City employees from using their positions or City resources at their disposal "for the private benefit of the [employee] or any other person, rather than primarily for the benefit of the City…" SMC 4.16.070.2. Historically, the Commission has looked for some private relationship between the City employee and the person benefited when analyzing whether a use has been primarily for the benefit of "any other person." In this case, there is evidence that Cannon was acquainted with representatives of two of the three organizations for which she waived fees. I do not find, however, that the relationship was a close, personal one that would raise issues under the misuse of position section (and need to be disclosed under SMC 4.16.070.1 as well).

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[1] The Superintendent may waive booking fees.

The Whistleblower Protection Code's definition of "improper governmental action" includes a "gross waste of public funds." Though the term gross waste of public funds is not defined in the City ordinance, we have in the past looked to the State's definition for guidance. State law defines a "Gross waste of funds" as follows: "to spend or use funds or to allow funds to be used without valuable result in a *manner grossly deviating* from the standard of care or competence that a reasonable person would observe in the same situation." RCW 42.40.020(5)

Based on the investigation our office conducted, I do not find that there has been a gross waste of public funds

CONCLUSION

Thank you for bringing these matters to our attention. I am providing a copy of this letter to Christopher Williams, DPR's acting Superintendent, so that he can decide whether any action is warranted on DPR's part in response to our findings.

If you would like to appeal my determination that the Ethics Code has not been violated, you may do so in accordance with Administrative Rule 4.[2]

Very truly yours,

Wayne Barnett
Executive Director

cc: Seattle Ethics and Elections Commission
Christopher Williams, Acting Superintendent, DPR
Kiesha Cannon, DPR

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[2] Administrative Rule 4 provides as follows:

B. An appeal of a dismissal shall be served at the Commission's office no later than 21 days after the date of mailing the decision of which review is sought....

D. A request for review shall state the grounds therefor, and shall be no longer than twelve 8-1/2" x 11" double-spaced pages in length with margins of at least 1" on every side, and no more than 12 characters per inch.

Exhibit A

Rental #262453 – Total waived $ 425

Basketball tournament
Saturday, March 30, 2013 (facility not open to the public)
10 hours of gym use not charged - $400
Booking fee of $25 not charged

Rental #260990 – Total waived $745

Nine basketball practices on consecutive Sundays for two-hour practice sessions
March 3 – April 28, 2013 (facility not open to the public)
18 hours of gym time not charged - $720
Booking fee not charged - $25
Staffing fee not paid[1]

Rentals #266457 and 261904 – Total waived $1,850

Six basketball practices on consecutive Monday and Thursday evenings for three hours each evening
May 6 – 23, 2013 (facility not open to the public).
18 hours of gym time not charged - $720
Booking fee not charged - $25

Nine basketball practices on consecutive Monday and Thursday evenings for three hours each evening
April 1 – 29, 2013 (facility not open to the public)
27 hours of gym usage not charged - $1,080
Booking fee not charged - $25

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[1] This organization practiced at the same time a long time renter, a local church group, met in a Southwest meeting room. The church group was charged for facility staffing. DPR policy requires that when more than one rental is occurring at the same time, both renters pay staffing fees.