

**Seattle Ethics and Elections Commission Special Meeting  
January 3, 2013**

A special meeting of the Seattle Ethics and Elections Commission convened on January 3, 2013 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Bill Sherman called the meeting to order at 4:02 p.m. Vice-Chair Rich Cohan and Commissioners Tarik Burney, Bruce Carter, David Mendoza and Kendee Yamaguchi were present. Commissioner Lorena González was absent. Executive Director Wayne Barnett and staff members Anthony Adams, Bob DeWeese, Polly Grow, Kate Flack and Chris Thomas were present. Assistant City Attorney Jeff Slayton was also in attendance.

**1) Public Comment**

Jack Sheridan of MacDonald Hoague and Bayless spoke against the proposed cap on attorney's fees in the draft Whistleblower Protection Code. He believed that the cap will discourage employees from taking advantage of the option for an administrative hearing. He told the Commission that the Hearing Examiner should be given the authority to determine the appropriate level of attorney's fees on a case-by-case basis.

**Action Items**

**2) Approval of minutes of December 5, 2012 regular meeting**

Commissioner Burney motioned to approve the minutes from the December 5, 2012 regular meeting. Vice-Chair Cohan seconded. The minutes from the December 5, 2012 regular meeting were unanimously approved.

**3) Proposed changes to Whistleblower Protection Code**

The Executive Director gave a brief explanation of the two significant changes to the draft since the last meeting. He said that intimidating behavior had been removed from the definition of retaliation, and reframed as a violation of the Ethics Code. He then addressed the

one remaining question, which was what to do about attorney's fees at the administrative hearing. He said that while the Commission had reached consensus at its December meeting that attorney's fees and emotional distress damages should not be subject to a single cap, the Commission had not reached a decision on whether there should be a separate cap for attorney's fees or no cap at all.

The Executive Director then segued into a discussion of differences between the draft City ordinance and recent amendments to the Federal whistleblower protection law, which Commissioner Yamaguchi had asked about in December. He said that while the new Federal law protects those who report to coworkers, the City's program is designed to get reports into the hands of those who can do something about the improper activities, and that protecting those who report to coworkers does not serve that purpose. He then said that the new federal law protects those who report the consequences of policy decisions. The Executive Director said that while people who object to policies may have protections under the First Amendment, he did not believe that doing so should entitle them to whistleblower protection. After discussing the pros and cons of providing protection to those who disagree with government policies, the Executive Director said that he wanted to do further research into the legislative history behind the change to Federal law, and would report back to the Commission in February.

Commissioner Carter then read a proposal that he had crafted to enhance the confidentiality afforded to whistleblowers. He said that he wanted to anchor the protection in the right to privacy, and signal the City's commitment to maintaining confidentiality. The Chair asked why it was preferable to be more specific than less, and simply say that the whistleblower's identity will be protected "to the extent allowed by law." Commissioner Carter said that he wanted to give the Law Department more time to consider his proposal, and so the

Commission agreed to hold the discussion of confidentiality until the February meeting, when Mr. Smith would be available.

The Commission then returned to the discussion of attorney's fees. The Chair said that he was torn about how to create an administrative forum that is both efficient and cost-effective. The Vice-Chair asked how much time an attorney would need to spend on a case before they bumped up against the cap. Mr. Sheridan told the Commission that they should expect attorneys to bill at between \$250 and \$500 per hour.

The Vice-Chair said that he did not think there was a right answer or a wrong answer, but said that he could support \$20,000 as a cap. The Commission did not take a vote on the \$20,000 cap, but agreed that the cap should be in the draft that is presented to the Commission for a final vote in February.

#### **Discussion Items**

#### **4) Public financing of City elections**

The Chair recommended that the Commission establish a small working group to tackle the City Council's request, since it would be impossible for the Commission to meet the Council's deadlines while meeting once per month.

Commissioner Carter asked why this issue was being taken up so soon on the heels of the elimination of war chests and the shortening of the fundraising window. Mike Fong with Council Central Staff shared that Council has long been interested in public financing, and that the legislation enacted in 2012 was always seen as one piece of a larger puzzle.

The Vice-Chair said that he was concerned about the timeline. He said that this was a big and complicated job for the Commission to accomplish in just two months. The Chair echoed the Vice-Chair's comments, and said that the Commission would need to be prepared to report to

the City Council that it was not able to complete the analysis in the time allotted. But he believed that the Commission should do everything in its power to answer the City Council's questions. The Executive Director said that he believed the Commission was already standing on second base because of the 2008 report issued by the Advisory Committee.

Commissioner Carter asked how the legal landscape had changed since the 2008 report. The Executive Director said that the Supreme Court had barred conditioning the award of public funds to a candidate on the spending of either an opposing candidate or an independent group. But beyond that, public financing programs remain constitutional.

After listening to explanations from the Executive Director, Seattle City Attorney Michael Fong, and other Commission members, Chair Sherman recommended a public hearing be set up and gave the green light for the S.E.E.C. to move forward on the Public financing of City elections issue.

#### **5) Executive Director's report**

The Executive Director introduced staff member Bob DeWeese to the new commissioners. He then reported that Mayor McGinn was appointing Brad Axel to the Commission to replace Tarik Burney, whose second term ended December 31, 2012. He said that the appointment was moving quickly, and that he expected Mr. Axel to be a member of the Commission when it met in February.

The Chair asked for a status report on staff's work compiling a roster of ethics penalties levied by the Commission over the years. The Director said that the work was ongoing and that he had asked Ms. Grow to prepare a roster of late-filing penalties issued in recent years as well.

Commissioner Yamaguchi asked about the production of the video voters' guide in even-numbered years, and the Director replied that he had spoken with the Seattle Channel's general

manager, who was going to crunch the numbers and get back to the Commission. The Director told the Commission that he had shared with the Seattle Channel the Commission's desire to produce a guide in even-numbered years in the interest of a well-informed electorate. The Director told the Commission that this would not be a live issue again until 2014, since primary and general election guides would both be produced in 2013, and they would include both candidates and ballot measures.

**The Special Commission meeting for January 3, 2012 adjourned at 5:37 p.m.**

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