

## **Seattle Ethics and Elections Commission Regular Meeting**

**February 5, 2020**

A regular meeting of the Seattle Ethics and Elections Commission convened on February 5, 2020 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Nick Brown called the meeting to order at 4:01 p.m. Vice Chair Hardeep Singh Rekhi and Commissioners Brendan Donckers, Eileen Norton, Richard Shordt, and Susan Taylor were present. Commissioner Bruce Carter was absent. 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, Marc Mayo, and Annie Tran.

### **Action Items**

Chair Brown asked the commission to address Action Item 7 first on the agenda, since he was currently sitting in leadership by himself.

#### **7) Election of Vice-Chair**

The Chair nominated Commissioner Shordt for Vice Chair and opened the nomination for questions or discussion by the commissioners. The nomination was seconded by Commissioner Norton. Commissioner Shordt stated he would accept the nomination. The Chair moved that Commissioner Shordt serve as Vice Chair for the 2020 calendar year. The motion was seconded by Commissioner Norton. The Chair asked if there was any further discussion, and hearing none, called for a vote. The motion was approved unanimously. The Chair thanked Vice Chair Shordt, and the Vice Chair stated that he was excited.

James Fuller, Marguerite Richard, and Omari Tahir-Garrett wanted to provide public comment, and when informed that public comment was not going to be starting the meeting,

asked for an explanation. The Chair thanked the group, stated that a response would be provided, and continued with Agenda Item 1.

**1) Minutes for January 8, 2020 special meeting**

The Chair asked if the commissioners had all been able to review the minutes and if there were any proposed edits or comments on the minutes. Commissioner Norton moved to approve the January 8, 2020 meeting minutes, and Commissioner Rekhi seconded. The motion to adopt the minutes passed unanimously.

**2) Settlement in Case No. 19-1-1105-1 (\$500)**

The Director said that this settlement resolved a complaint brought to the office last November, and the settlement before the commission was agreed to by Councilmember Lisa Herbold. The case involved what Councilmember Herbold acknowledged was a violation of SMC 4.16.070.B, which bars public officials from using public resources for a matter which could appear to be for other than city purposes. This arose from text communications by Councilmember Herbold to Seattle Police Chief Carmen Best after an RV, which Councilmember Herbold believed to be stolen, was delivered to the front her house. Councilmember Herbold agreed to pay the fine of \$500, and the Director recommended that the settlement agreement be accepted by the commission. The Chair thanked Councilmember Herbold for attending and stated that she was welcome but not required to come to the front and speak. Councilmember Herbold stated that she was there to answer questions, otherwise she believed the settlement would speak for itself. The Chair invited Councilmember Herbold to come up in case any of the commissioners did have questions. The Chair asked if all the commissioners had a chance to review the settlement.

Commissioner Rekhi asked the Director if there were any previous cases that were similar. The Director answered, yes, in 2018 there was a \$500 fine for a Seattle IT employee, and while they were a lower ranking employee, in that case the communications continued over several weeks. In this case, the Director believed it was a single lapse in judgement in the form of a text communication to the Seattle Police Chief. Commissioner Rekhi asked the Director if there were any other cases besides the IT one that he could remember. The Director answered no, not to his recollection. Commissioner Rekhi asked if that previous case was the basis for the \$500 fine and the Director confirmed that it was.

The Chair asked how this issue was reported. The Director answered that a member of the public made a public records request, found the text communications and reported it to the office. The Chair asked if there were any further questions for the Director or the Councilmember. Commissioner Taylor asked if this was the entire text chain, and the Director answered yes. Commissioner Donckers asked if the correct protocol was no different for a councilmember than it would be for any citizen if they have a non-emergency to report, which would be to call the non-emergency police number. The Director confirmed that was correct.

Commissioner Norton moved to approve the settlement, and the motion was seconded by the Vice Chair. The Chair asked if there were any further questions or comment on approving the settlement. Commissioner Donckers asked Councilmember Herbold why she did not use the non-emergency line. Councilmember Herbold responded that in October all Councilmembers and the Mayor received an email from a resident of the city saying that they intended to take an RV that somebody lived in and would deposit it in front of a councilmember's home, and a few days later there was a radio interview with that same individual threatening again to take someone's home and deposit it in front of a councilmember's house. When Councilmember

Herbold first received notice via Facebook, with pictures of a U-Haul truck towing an RV in front of my home, then her first thought was that somebody's home had been stolen and that's what led to her decision to contact the Chief. The Chair asked if there were any further questions. Hearing none, the Chair called for a vote on the motion to approve the settlement. The motion was approved unanimously. The Chair thanked the Councilmember for her attendance.

**3) Appeal of dismissal in Case No. 19-1-1022 (Alleged misuse of position)**

Ms. Jennifer Aspelund stepped forward to appeal the dismissal of her complaint. The Chair thanked Ms. Aspelund for her attendance and Ms. Aspelund thanked the commission. The Chair noted that the commission had read the appeal and welcomed Ms. Aspelund and invited her to share any further input. Ms. Aspelund stated that she sent something over to the Director regarding early budget talks for a daycare since Councilmembers Mosqueda and González were part of that legislation. Ms. Aspelund says that when she looks at the facts, the fact is that it has been spoken about in city hall, and possibly even in the Seattle Municipal Tower, about having a daycare, but that proposal had not moved forward.

Ms. Aspelund then stated that in April, a television station did an interview with Councilmember Mosqueda and former Councilmember Bagshaw, and they were touting a beautiful 16-crib room at City Hall, and didn't put a price tag on it, but the point was it was not open to the public. Ms. Aspelund stated it needed to be open to the public because if her taxpayer dollars would pay for this, then it needed to be open to the public and it needed to be open equally. Ms. Aspelund then quoted from the Director's dismissal "On November 19, 2019, the Council voted 8-0, with Councilmember González absent, to add \$100,000 to the budget to create an infant and parent room in City Hall. The infant and parent room, according to the budget action, would create a quiet place for employees to feed and comfort their infants." The

issue for Ms. Aspelund was that it doesn't matter if it was called a daycare, or a baby room, if you are using taxpayer dollars it needs to be open to the public. Ms. Aspelund stated that former Councilmember Bagshaw, during a televised interview, pointed to other private companies which provided onsite childcare to employees and to the facilities attached to the King County Administration building. Ms. Aspelund continued that the issue is that this is a public building, and she is having a hard time understanding how ethics does not apply to this because it sounds like favoritism and preferential treatment to her.

The Chair said that he originally read the complaint as being against Councilmembers Mosqueda and González for violating the city Code for passing something or being involved in something for their personal gain but what the Chair was hearing now was that perhaps her principal disagreement was due to the non-public nature of the facility. Ms. Aspelund said that she had listened to the interview on the television station and it was look at this beautiful 14 or 16-crib room for employees, and you could see that it was employees on this tour, and it all leads to that. Ms. Aspelund continued that it goes back to when that legislation was drafted, and she thought the budget talks were crazy and she had been listening to them on the Seattle Channel, to find where it was that Councilmember Mosqueda said to former Councilmember Bagshaw, as the chair of the budget, that Councilmember Mosqueda would like to have a green sheet to change whatever to get money and Ms. Aspelund still to this day believes it was \$4.2 million that Councilmember Mosqueda was asking for because former Councilmember Bagshaw answered that she thought it was going to be a hard sell to the Mayor.

The Chair asked if Ms. Aspelund disagreed with the Director's summary of the timing of when the initial discussion occurred within the city council and the timeline of when the issue arose. Ms. Aspelund said it honestly didn't matter to her, she wasn't paying attention back in

2015 or 2014, but if she had been paying attention then, she would have had the same issue then that she has now, that there is a daycare being planned, and that it keeps going back and forth, daycare or baby room, public or not public, partially for employees, the rest public. The Chair said he understood the concern that many people in the public may have around a facility being operated that might be at various stages contemplated only for city employee use, and he understands that portion of Ms. Aspelund's complaint but asked her to help him understand how either Councilmember was doing it for their personal gain, particularly if it was contemplated well before either of them was having a child or contemplating having a child, as far as recorded. Ms. Aspelund said that when you look at these spaces in time, it was addressed, then two years goes by, three years goes by, and in the facts there is nothing in between there, and then all of a sudden Councilmember Mosqueda and Councilmember González become pregnant, and now they're both back on the wagon of we need to have a daycare at City Hall, we need to have a daycare in the Seattle Municipal Tower. Ms. Aspelund suggested that maybe not all the facts are presented because there are breaks in time where they as Councilmembers could have addressed it and didn't, and now here we are in 2019, and doing the budget, and they're both expecting children. Ms. Aspelund urged the commission not to get her wrong, as she has two grown adults herself, but this has the appearance of being preferential to her. Ms. Aspelund continued that there isn't a whole lot of transparency here because it is bouncing around all over the place, such as if we can't get the daycare then we're going to get the baby room.

Commissioner Rekhi asked if Ms. Aspelund believed there was some sort of self-dealing going on here, and since there are plenty of facilities in the Seattle Municipal Tower and in other public buildings that are only open to employees, he was not sure he understood that part of the complaint. Commissioner Rekhi continued that it appeared that Ms. Aspelund had singled out

two people and he wanted to understand the preferential treatment that she thinks they would be receiving. Ms. Aspelund said that it was singling out the two Council people because they are the two that worked on the legislation and specifically Councilmember Mosqueda with former Councilmember Bagshaw working on that legislation, but she was unaware until the Director's report that what was originally talked about in budget talks got reduced to \$100,000 and that the whole council voted on it. Ms. Aspelund asked if she now needed to go back and say the whole council voted to have a \$100,000 private baby room instead of the daycare after the Mayor said no. Ms. Aspelund continued that when you read your ethics and what it has to meet, to her it felt like it was preferential treatment.

Commissioner Norton asked Ms. Aspelund that since there were departments in the city where they have a room set aside for lactating mothers where they can go breast pump, does she believe those rooms should all be open to the public. Commissioner Norton said that she sees this infant room as being similar to the breast pumping rooms, and it is not a place where they are going to keep children as a pseudo-daycare. Ms. Aspelund said it was her taxpayer dollars and if she were to walk into city hall right now, she wanted to know where the baby room for her would be. Commissioner Taylor asked how it was different than a kitchen, and Commissioner Norton agreed and said it was like the bathrooms in offices that are not open to the public.

The Chair asked if the complaint was that Councilmembers González and Mosqueda did something improper in that process. Ms. Aspelund said she was a taxpaying citizen and she was watching the city council and listening to Councilmember Mosqueda with former Councilmember Bagshaw saying it was such a great idea to have a daycare. The Chair asked why Ms. Aspelund did not have a complaint against former Councilmember Bagshaw. Ms. Aspelund said that she didn't know how involved former Councilmember Bagshaw was until she

saw former Councilmember Bagshaw and Councilmember Mosqueda go on the tour. Ms. Aspelund continued that Councilmember Mosqueda was still upset even now, that the room for 16 cribs in 2021 was not sufficient, since she went back to work in February, because she needs daycare and Ms. Aspelund said she gets it, that she is not opposed to daycare, and she is not opposed to a baby room but it needs to be open to the public if taxpayer dollars are used for it.

Vice Chair Shordt said that it sounded to him like the concern was about being a good steward of taxpayer funds, as opposed to unethical behavior by a city Councilperson and he did not see how voting for a budget line, whether or not someone was pregnant or had a child, was necessarily an ethical violation under the Code. The Vice Chair stated that he believed Ms. Aspelund had valid concerns about how taxpayer dollars are spent, but it didn't sound so much like an ethical concern as much as a good governance concern and might otherwise be an issue raised before the city council itself.

Commissioner Rekhi added that he did not see a distinction between this infant room, or whatever it may be, and private bathrooms that are only available to city employees, or kitchens only for city employees, or conference rooms that are only for city use, and if Ms. Aspelund is unhappy that this money is being spent on an infant room, then this would be a political issue, not an ethical violation. The Chair asked the Director if he had any further context or information that would be helpful for the commission in their deliberation. The Director noted when Commissioner Norton stated that the daycare would be a problem if it was only offered to employees, while that may be a legal issue, ethically there were several benefits that are available to city employees, that are not available to the general public, such as an ORCA pass or great health benefits, and the City, acting as an employer, has tools to attract good employees and one of the ways it does that it is to offer such modern benefits. Commissioner Norton said

she understood, but if there had been a daycare created, for only city employees below market rate, then she would consider that a problem. Commissioner Rekhi said that he also wanted to add that he does not believe that the councilmembers were acting for personal gain, and that making an infant room available for city employees in a city building is a legitimate use of taxpayer money and not for personal gain, and a complaint could be raised through a political process, but would not be considered an ethics violation. Commissioner Donckers noted that he would be abstaining from this vote.

The Chair asked Ms. Aspelund if there was anything further the commission hadn't heard. Ms. Aspelund said no, she didn't think so, and they could agree to disagree because she still thought that using taxpayer dollars was inappropriate when you are not going to offer it to the public, and there is no place over there to nurse a baby, but you're going to give all the employees a room and we already pay your salary, and now we're going to give you a baby room. Commissioner Rekhi said that he agreed that everyone should have the right to childcare, and oftentimes an employer can provide that kind of benefit, and there are a lot of private employers that can provide that benefit and he didn't think that the city should be prohibited from providing that benefit to their employees. Commissioner Rekhi continued that the city is an employer, and they should be able to provide that benefit to their employees if they see that there is value to that, and it also kind of helps deal with some of the inequality that is seen in the workplace between men and women and he imagined it would create an impediment to someone to work if there isn't an infant room or daycare available to them, and he would hate to see more of that inequality creep in for city employees. Ms. Aspelund asked what about the public and said that the commission was failing the public. The Chair stated that he actually believed there was a tremendous public benefit. Ms. Aspelund said that what she is saying is that the

commission is all about equality and the city council is all about equality but then they are only going to have the room for only one select working group. The Chair noted that he did not see the distinction between that and lunchrooms only for the people who worked there. Ms. Aspelund said fine, then we'll agree to disagree. The commissioners thanked Ms. Aspelund for attending. Commissioner Rekhi made a motion to deny the appeal, which was seconded by Commissioner Norton. Commissioner Donckers abstained from the vote and the motion to uphold the dismissal was passed by the commission.

#### **5) Rule adjusting contribution limits**

The Director said that I-122 reintroduced an inflation adjustment into the Code for contribution limits. The calculation was run from October 2015, which was the month prior to the enactment of the voucher program, through December 2019 and it yielded \$538. The commission has the ability to adjust that to a level that is most convenient to the public, so the Director recommended that the individual contribution limit adjusted for inflation be raised to \$550 to make it divisible by 50. The Chair asked about the last increase enacted. The Director answered that the contribution limit went from \$700 to \$500 when I-122 was enacted. The Chair asked that if the \$538 was a 7.78% increase, then what would the increase percentage be for \$550. The Director answered that it would be a 10% increase, and the Director could not think of another jurisdiction that had a contribution limit that was not divisible by 50. Commissioner Donckers moved to adopt the recommendation to raise the contribution limit to \$550, which was seconded by Commissioner Taylor. The Chair asked if there was any further discussion or comment. There was none, and the motion passed unanimously.

**6) Rule adjusting contribution limits for participants in the Democracy Voucher Program**

The Director stated that for the Voucher Program contribution limits there was more flexibility in terms of the choices before the commission since it was not a straight consumer price index calculation, but was meant to keep track with changes in inflation or deflation and ensure high rates of candidate participation and public satisfaction. There were two choices, it used to be \$250 and \$500, so it should either be raised to \$275, as half of \$550, or raised to \$300 to preserve the \$250 dollar differential. The Director presented the concern that the \$275 amount, as a halved amount, could over the years become an impediment to high candidate participation, so he had recommended \$300 for participating Democracy Voucher Program candidates, and \$550 for candidates not in the program. The Chair asked for questions or comments. Vice Chair Shordt said the reasoning made sense, to avoid the straight 50% being an impediment for candidates and asked if there was any sense that this would create any budgeting problems for the upcoming year. The Director clarified these were only individual contribution limits, and that the voucher distribution limits would remain unchanged by this increase. The Chair agreed that it also made sense to him to adjust the limits as suggested by the Director. The motion to approve this proposed change to the contribution limits for the Democracy Voucher Program was made by Commissioner Donckers and seconded by the Vice Chair. The motion passed unanimously.

**4) Rule designating employees who must file financial interest statements for 2019**

The Director asked the commission to adopt the annual rule for those employees identified by their departments who meet the thresholds identified under SMC 4.16.080 for filing a financial interest statement. This year it is 1,780 employees, and the law requires this be done by rule. The Chair asked what the difference was from last year. The Director answered it was up

a little bit from last year, but there are inevitably duplicates, where someone will be identified by more than one department as a filer, and some will have left the City payroll between now and the filing deadline, and not end up filing. The Director believed it was roughly 1650 last year who ultimately filed. The Chair asked if there any questions or concerns from any of the commissioners. There were none. A motion to approve the rule designating employees who must file as proposed by the Director was made by Commissioner Norton, and seconded by Commissioner Donckers, and the motion passed unanimously.

### **Discussion Items**

#### **7) Democracy Voucher Program report**

Democracy Voucher Program Manager René LeBeau provided copies of the biennial report and the community-based organization outreach memo to the commission to consider and noted that these documents will be on the official agenda for next meeting.

The memo regarding the community-based organization contracting work that was done contains the activities of the organizations along with three areas of feedback received from the organizations. Commissioner Norton asked if it was known, of the 8% of residents who received their vouchers and used them, how many were repeats. Ms. LeBeau answered that analysis has not been completed, but that is expected as part of the BERK report.

Ms. LeBeau noted that there was a preliminary report of some findings from BERK regarding feedback from candidates, gathered through phone interviews and surveys, and that analysis is beginning. Interesting items that came from the BERK candidate-only feedback was a lack of requests to change the voucher mail out date, which is a question that will also be put to residents, and a split on changes to the spending limits.

The biennial report is a summary of the administration of the program over the two-year election cycle. The Chair asked if the biennial report would be available publicly and Ms. LeBeau answered that it would. The Chair then asked if there was anything noteworthy or new in the report from last year that the commission should focus on.

Ms. LeBeau answered that there was a doubling of the percentage of users from 2017, which was great, and 2017 saw a doubling of participants from 2015. BERK will have more analysis, but we know that the vouchers came in from all over the city, and many candidates used them. The online portal was a surprise, it took quite an effort to get it launched and available in 15 languages, but a significant number of users were on the portal, which was exciting. Commissioner Donckers asked if there was an estimate or goal for how many residents who received vouchers would use them, for example, if it was 4% in 2017, did we aim to double that amount. Ms. LeBeau said that there was not a particular targeted number of users laid out because there were so many different factors and variables that complicate that type of projection. The Director also noted that during the general election, the candidates all maxed out their voucher funding, so the resident participation percentage could not have been increased any further, that was the maximum number of people who could use their vouchers.

Commissioner Donckers said that brought up the question of whether that means there is a disincentive that is being created by getting over 10% participation, because the resources wouldn't be used, and if maybe they should consider reducing the amount each person can contribute, but acknowledged that was a separate path. Commissioner Donckers then said that according to his recollection, in 2017 there were a few disgruntled candidates in terms of how they felt their interactions went with our office and asked Ms. LeBeau felt there was less frustration from the candidates this year. Ms. LeBeau stated that she did think so, and there were

areas to improve, but there is a good idea of what needs to be improved and it was better than 2017. Ms. LeBeau continued that from the preliminary report from BERK there was high praise for the office from some of the candidates, which really started with Polly Grow and her availability to the campaigns, and there was appreciation for all the candidate updates sent. The Candidate Introductions, which were statements provided by candidates and then translated, were also found useful by the candidates. Ms. LeBeau noted that BERK would provide more in the way of numbers and statistics for the commission. Commissioner Norton asked if the BERK report will include percentage of users out of those sent, and will they include vouchers given across districts. Ms. LeBeau answered yes, and stated that to Commissioner Donckers earlier point, the value of the vouchers was also a question going to candidates and residents. Commissioner Norton asked if it was known how many residents gave all four vouchers to one candidate. Ms. LeBeau said it was similar to 2017, most people turned in all four at once and gave them all to the same person, but that would be a number provided by the BERK analysis. The Chair asked if there were any additional questions or comments, and hearing none moved to the final item on the agenda, after thanking Ms. LeBeau.

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

The Director stated that the biennial Election Report will be ready very soon, Ms. Grow tried to get it ready for this meeting, but it will be available for next meeting. The Director stated that most of the trends seen in 2017 persisted in 2019. The average contribution was again at roughly \$80-90, which had been at roughly \$230-240 before the Voucher Program debuted.

The Director noted that the City's opposition to the certiorari petition in the Elster case is due shortly. The city did not reply originally, but the Supreme Court asked for a reply. The Director said he had read a draft and it was very good. The Director will send a copy of the final to the commission.

The office is hiring for two positions currently, the front desk position that was previously discussed as being filled fell through, and is being re-posted, and the search for the other IT professional is also underway.

In terms of the budget, in the general fund the office underspent by \$84,000 and there was a \$1.9 million underspend for the Voucher Program because of the projections required for the candidate disbursements. The Chair asked when the next meeting was scheduled, and the Director answered that it was currently scheduled for Wednesday, March 4<sup>th</sup> and commissioners should please let the Director and/or Chair know if they are not able to attend. The Chair asked if there were any final questions or concerns, and hearing none, brought the meeting to a close.

**The Regular Commission meeting of February 5, 2020 adjourned at 4:57 p.m.**