

Seattle Ethics and Elections Commission Regular Meeting

December 5, 2012

The regularly scheduled meeting of the Seattle Ethics and Elections Commission convened on December 5, 2012 in Room 1600 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Bill Sherman called the meeting to order at 4:00 p.m.

Commissioners Bruce Carter, Rich Cohan, Lorena González, and Kendee Yamaguchi were all present. Vice-Chair Tarik Burney and Commissioner David Mendoza were absent. Executive Director Wayne Barnett and staff members Anthony Adams, Polly Grow, Kate Flack and Gary Keese were present. Assistant City Attorneys Jeff Slayton and Gary Smith were also present.

1) Public Comment

There was no public comment.

Action Items

2) Approval of minutes of November 7, 2012 regular meeting

Commissioner Yamaguchi motioned to approve the minutes from the November 7, 2012 regular meeting. Commissioner Cohan seconded. The minutes from the November 7, 2012 regular meeting were unanimously approved.

3) Settlement with City employee who used City facilities for private business (\$1000.00)

The Executive Director said that the employee in question acknowledged using City resources to conduct a private business, and had agreed to pay a \$1,000 penalty. He recommended that the Commission approve the settlement. Commissioner Cohan motioned to approve the settlement and Commissioner González seconded. The motion carried unanimously.

The Chair asked the Executive Director to brief the Commission in early 2013 on the penalties the Commission had approved or levied in recent years.

4) Reappointment of Richard Cohan to the Commission

The Chair told the Commission that Commissioner Cohan's term was expiring at the end of 2012. In light of Commissioner Cohan's contributions to the Commission, and the fact that this was the end of his first term, the Chair said that he would like to see Commissioner Cohan reappointed. Commissioner Carter made a motion to rename Commissioner Cohan as the Commission's appointee, and Commissioner Yamaguchi seconded the motion. The motion to reappoint Richard Cohan to the Seattle Ethics and Elections Commission carried unanimously.

5) Election of officers for 2013

Commissioner Cohan nominated Bill Sherman to serve another term as Chair. Commissioner Carter seconded the nomination, and Bill Sherman was named Chair for 2013 by a unanimous vote. The Chair then told the Commission that Vice-Chair Burney's second term was drawing to a close and that it was not yet known whether the Mayor would reappoint the Vice-Chair to a third term. The Chair said that he had spoken with Commissioner Burney, and that he was interested in ensuring that the Vice-Chair would be able to serve for the entirety of 2013. With that being said, Commissioner Carter nominated Commissioner Cohan as Vice-Chair, and Commissioner González seconded. Commissioner Cohan was chosen by a unanimous vote to serve as Vice Chair for 2013.

6) Merit leave determination for the Executive Director

The Chair explained that at the end of each year the Commission decides what, if any, merit leave the Executive Director has earned for his performance. The Chair said that in past years the Commission had awarded the Executive Director five days to recognize his performance.

Commissioner Cohan said that he believed an award of six days was appropriate. Commissioner Carter said that the Commission had an excellent reputation in the community, which he said reflected well on the Executive Director's performance. Commissioner Yamaguchi also said that she believed six days were appropriate.

Commissioner Cohan made a motion to award the Executive Director six days of merit leave, which Commissioner Yamaguchi seconded. The motion carried unanimously.

7) Discussion of proposed changes to Whistleblower Protection Code

The Chair told the Commission that he had elevated this from a discussion item to an action item, in case commissioners felt in a position to vote on whether to recommend the changes to the City Council by the end of the meeting.

The Executive Director gave an overview of the rationales for changing the Whistleblower Protection Code, and summarized the progress of the effort to date for the two commissioners who had joined the Commission since the last discussion of the proposed changes. Kate Flack then made a presentation highlighting details of the proposed changes, and contrasting them with the law as it stands today.

Commissioner Carter was curious what protections the law afforded to a whistleblower who reports to federal officials. After a discussion, the Commission asked staff to broaden the protections to those who report to law enforcement agencies, not only *local* law enforcement agencies.

Commissioner Carter asked what confidentiality staff can meaningfully offer to employees in light of the public records act. Ms. Flack replied that staff uses the law enforcement exemption while an investigation is ongoing, but after that only employees who reasonably fear for their safety or fear a loss of property can be protected.

Commissioners Yamaguchi and González both asked whether it was possible to reduce the 90 days that the draft law gives staff to investigate a claim of retaliation. Employees in that situation are likely to find three months an eternity. The Director said that staff will do everything possible to expedite these kinds of investigations, but said that the law should recognize that there will be complicated cases that will take longer to investigate. The Chair said that the Commission's oversight responsibility will be crucial here. If the Commission sees that it is taking staff 90 days to investigate routine claims, the Commission will need to act.

Commissioner González said that she was concerned about the cap on damages for emotional distress and attorneys' fees. If employees are entitled to representation, then the \$20,000 cap severely hampers their ability to retain counsel, especially when doing so will reduce the amount of money they can recover for emotional distress. She said that she would prefer that the Hearing Examiner set attorneys' fees.

Assistant City Attorney Slayton said that the Executive Director is prosecuting the case, but that at past meetings the Commission had agreed that employees should have the right to counsel at the hearing. The Chair explained that he believed that there were many reasons that an employee might wish to retain counsel, even though staff was prosecuting the case.

Commissioner González asked who will be responsible for screening what cases will be handled in the administrative forum and which are better handled by a private suit. Staff replied that the administrative forum will be available for any employee who chooses to go that route. The theory is that when an employee believes that they may be able to recover more through a private cause of action, or when the Executive Director explains that the Commission cannot pay for expert witnesses to testify in an administrative hearing, the employee will choose to proceed

in superior court instead of the administrative hearing. Commissioner González said that it would be important for staff to inform employees of their options at the outset.

At the discussion of damages available in a civil suit, the Chair recognized Jack Sheridan to make a public comment. Mr. Sheridan recommended that the law unambiguously state what damages are available. He recommended that the law state explicitly that actual damages under RCW 49.60.030 are available to victims of retaliation.

The Chair asked how the damages available to victims under the draft ordinance stacked up against damages available to victims under the federal whistleblower. Mr. Sheridan said that he believed that the damages available were similar to those under federal law, and recommended that the Commission use language that would be familiar to state court judges. He said that he would much rather be a victim of retaliation under the draft changes to the City law than a victim of discrimination at Hanford. He said that the changes being discussed would place the City at the forefront of the effort to protect whistleblowers.

Commissioner Yamaguchi said that she wanted to be assured before supporting the proposed changes that they reflected best practices under the recently amended federal whistleblower protection law.

The Chair said that the draft required a little more work before a vote, but said that he believed the Commission was close, with just a couple issues remaining to be resolved. He thanked his fellow commissioners for their contributions.

Discussion Item

8) Executive Director's Report

The Executive Director did not give a report

The Regular Commission meeting for December 5, 2012 adjourned at 6:09 p.m.