

Seattle Ethics and Elections Commission Regular Meeting

March 6, 2019

A regular meeting of the Seattle Ethics and Elections Commission convened on March 6, 2019 in Room 4080 of the Seattle Municipal Tower, 700 Fifth Avenue. Commission Chair Brendan Donckers called the meeting to order at 4:01 p.m. Commissioners Susan Taylor, Nick Brown, Charlene Angeles, Bruce Carter and Vice Chair Hardeep Singh Rehki were present. Commissioner Eileen Norton was absent. Executive Director Wayne Barnett was joined by staff members René LeBeau, Annie Tran, Polly Grow, and Chrissy Courtney. Assistant City Attorney Jeff Slayton was in attendance.

1) Public Comment

Alex Tsimerman, Marguerite Richard, and Michael Fuller all made public comment.

Action Items

2) February 6, 2019 regular meeting minutes

Minutes need to have the second date referenced updated from January to February. With that adjustment, Commissioner Carter motioned to approve, and Commissioner Brown seconded the motion. The motion passed 5-0, with Commissioner Angeles abstaining.

3) Request for reporting modification – Jon Lisbin

The Director introduced Mr. Jon Lisbin, who was in attendance to request a reporting modification to the F-1 Personal Financial Affairs statement. Mr. Lisbin is requesting the modification as per rule 5F of the Election Code Administrative Rules, which allows for a modification on the same terms as ordered by the Public Disclosure Commission (PDC). The exemption was given by the PDC to Mr. Lisbin at its February 18, 2019 meeting. Mr. Lisbin was

also a candidate in 2015 and requested and received an exemption at that time. The modification being requested is to allow Mr. Lisbin to abstain from disclosing a customer list of those who paid more than \$12,000 from a company he once owned. The Director informed the Commission that staff was comfortable with the exemption being granted.

Commissioner Carter asked Mr. Lisbin if he would have any conflict of interest. Mr. Lisbin replied that he would not, and informed the commission that he is under a non-disclosure agreement with the purchasing company. Commissioner Taylor asked Mr. Lisbin if he had any residual interests or any ongoing obligations to the company, and he replied that he did not, it was a clean separation of interests. Commissioner Carter then asked if Mr. Lisbin was in any litigation with the company and Mr. Lisbin answered that he was not. The Chair asked the Director if there would customarily be any further validations, and the Director said no, the Commission generally defers to PDC determinations on these issues because the PDC handles many of these requests, while this type of request is a rare circumstance for the Commission. Commissioner Carter moved to grant Mr. Lisbin his requested exemption, Commissioner Angeles seconded the motion, and all voted in the affirmative.

4) Rule defining debates

The Director introduced a redline copy prepared for the proposed changes for Rule 16 defining debates for participants in the Democracy Voucher Program. The district city council member and city attorney were the two races the commission had requested updated proposal options, which were provided by the Director, along with charts showing previous races and contributors. Limits of 50, 25 or 20 contributors were the updated proposed options.

The district city council race with a 50 contributor limit in 2015 would have eliminated six candidates who had no contributors, and five candidates who only had between 10 and 37 contributors. Either of the 20 or 25 contributor limits would have only eliminated the six candidates who had no contributors from the list of candidates required to be invited to participate in a debate in order to qualify the debate for the Democracy Voucher Program. The Director noted that the City Attorney's race has either been unopposed or has been tightly contested, and in the last fifteen years there have not been any vanity candidates for that office. The language that has been proposed to replace the wording regarding "all" candidates, is the expression of "all or at least" candidates that have "minimal public support", which is what will be defined by the minimum threshold of contributors required, as chosen by the commission.

Commissioner Taylor asked if a candidate does reach the minimum level but for some reason does not show up at the debate, does that make the debate not count for the other candidates. The Director answered that no, the candidates had to be invited, but they did not have to show up for the debate itself, only be presented with the opportunity.

The Chair asked if there were any strong feelings regarding the 50 contributor threshold. Commissioner Brown asked the Director how many people in the district election would not have met the various proposed cutoffs? The Director replied that 11 candidates would not have made the cutoff if 50 were the minimum required number of contributors, and eight would not have made the cutoff if either 20 or 25 were the minimum required number of contributors. Commissioner Angeles asked if we are sponsoring any debates this year to make sure that there is enough opportunity to meet the requirement. The Director answered that it was not in the plans to offer a debate this year, the one that was offered previously by the COMMISSION was not needed during the last election cycle. The Director also noted that if a candidate could show that

they could not attend the three debates that meet the standards of the program, then the commission has the ability to waive that requirement. Vice Chair Rehki asked for clarification as to whether this was related to a previous year issue if the debate is held at a public location. The Director answered that this is not in contravention of that rule; for example, if the public library offered to hold a debate, then the library would not be able to host a debate and only invite those candidates who met a certain contributor threshold without being in violation of the elections code and state law. Vice Chair Rehki asked if it was known how many of those such debates are held. The Director answered that there were not many, but historically the library has hosted a debate and certain community councils. but is specific to the number of candidates that must be invited for the debates to qualify for the program.

Commissioner Brown brought up a logistical concern of the practical application of the timing of the day of filing, as in, would the debate organizers know in enough time. The Director indicated that the original intent was to keep candidates from being excluded, but that it could make sense to make a cut off a week prior to the debate or two weeks prior to the event. Polly Grow noted that in June the filing requirements become a weekly requirement and as soon as a campaign files, that information is available immediately. Vice Chair Rehki asked for clarification as to whether, if someone was able to meet the qualifying threshold on a Thursday and the debate is scheduled for Friday, then the debate would no longer count towards the Democracy Voucher Program requirement because now a qualified candidate would not be invited to the debate on Friday. The Director confirmed Vice Chair Rehki's understanding of the current rule. Commissioner Angeles noted that a week is a long time within a campaign timeline, a lot of contributions could be collected within a week. The Chair said that he was thinking about how much notice the sponsor or organizer of the debate has to provide, because that could affect

gaming of the system if you schedule a debate in the middle of March. A higher threshold in March would benefit a certain type of candidate, and 50 contributors in July is very different than 50 contributors in March. Since there is no window in which the debates have to occur, that might get at the gaming question, and could help with addressing concerns about a high barrier to entry.

Commissioner Angeles noted that because of the Democracy Voucher Program there was an expectation that the number of contributors was going to increase dramatically. Commissioner Carter said there was previously a concern that there was not going to be enough of an audience, but speculated that if someone wanted to minimize their debate exposure, a candidate could show that they were the only ones who had qualified at a very early date and so they are the only ones that can be invited for a qualified debate. The Director noted that type of scenario is not impossible but does seem improbable given the coordination that would be required and the constraints of the campaigning and the organizers of the debate events. The goal of this rule is to make the debates useful to the voters.

Vice Chair Rekhi asked if contributors were defined as being contributions of vouchers, and the Director answered that yes, those count, as well as any other types of contributions or contributing methods. Vice Chair Rehki further clarified that this means a contributor would be defined as someone who gives any type of contribution, regardless of where that person lives, or the amount of the contribution, and the Director confirmed that understanding was correct. Commissioner Angeles said this was difficult because they were trying to see what difficulties may arise in the future, and one concern is that she believes that the requirements of the program need to be clear, and that any penalties need to be made clear, and the Director said he believed

that was done with the law changes that were made to allow for a monetary fine in addition to the disqualification from the voucher program.

The Chair said that the proposal of 100 contributors for the mayoral race does not seem controversial. That would still have meant 8 candidates from the last mayor's race would have qualified. The two at large city council seats would have only excluded one in 2015 and for city attorney, it would not have excluded anyone if there were a 50 contributors limit. The Chair noted that since this year it is only the district races, it might be more reasonable to give more leeway to the district races, since there are a lot of candidates, and the 25 limit may be more appropriate. A 25 contributors limit would have only excluded two candidates, plus the six who did not raise any contributions in the previous year. Commissioner Carter argued in favor of the 25 limit in order to be more inclusive. Commissioner Angeles asked for the largest number of candidates for a single position who were either qualified for the program or close to qualifying, but there were only four qualified candidates, none in the same district. The open seats this year are for districts 2, 4, 6, and 7 and those will all be very crowded contests. Commissioner Angeles indicated that more solid numbers might create the threshold itself, and she asked if the rule was meant to be passed today. The Director answered that yes, ideally, because there were organizations who were asking for clarification, so it would be helpful. Commissioner Angeles noted that there could always be more changes made in future if necessary. Commissioner Taylor indicated that she also was in favor of more inclusivity, especially for a new program.

Commissioner Taylor moved that the Director's recommendations be adopted, in specific for a contributor threshold for the district city council member be 25 and 100 for Mayor, 50 at large and 50 for city attorney. Commissioner Taylor's motion was seconded by Commissioner Carter. Commissioner Brown made an amendment to Commissioner Taylor's motion to have the

number of contributors counted 72 hours prior to the date of the debate. Commissioner Carter seconded the amendment proposed by Commissioner Brown. Vice Chair Rehki asked for discussion, and asked whether the deadline for filing was a Friday and Polly Grow clarified it was Monday. Vice Chair Rehki asked if it would make more sense to count the contributors as of the Monday filing deadline a week prior to the debate. Commissioner Brown asked since the C-3's can be filed every day, what does the Monday requirement mean. The Director clarified that Monday is the due date, but that the campaign could file any day as long as seven days had not passed. Vice Chair Rehki said then if the filings come in on Monday, it would make sense to tag to the previous Monday, but he would agree to the 72 hours. Polly Grow noted that the filing is monthly until June, and in June is when the weekly reporting begins. All voted in favor of adopting the amendment of Commissioner Brown, no opposition and no abstention. All voted in favor of Commissioner Taylor's motion as well, with no opposition and no abstention.

Discussion Items

5) Lobbying Law

The Chair indicated that he wanted to define what the commission would like to accomplish during this meeting and then decide whether there should be an Executive Session to determine legal impacts to any commission decision. The Director provided a chart regarding the top 20 cities who have independent ethics agencies similar to Seattle ranked by size that do require lobbying reporting with agencies. All the cities except Denver do require that lobbying contacts with city regulators be disclosed. Seattle is one of only two cities that does not require any fees for the lobbyists to register, which also correlates with the Full Time Equivalents (FTE) that the agencies devote to lobbying compliance is at least one FTE with support from other staff as needed. The Director pointed out that Polly Grow took over compliance in 2007-2008 and

there were 8 candidates at that time and there are 50 candidates now. There is a staff deficit in terms of the resources available to meet the demand that could be caused by expanding the definition of lobbying, and additional resources would need to be requested.

The Director was hoping that the commission could choose a few cities of interest and see if there could be a more in-depth examination of the policies those cities are already working under. Commissioner Brown said that would be useful and asked if there would be a way to find out which cities have requirements different than their state laws, since Seattle is currently consistent with the state laws and he would be interested to know which cities may be regulating outside of their state law. The Director said he could provide that information. Commissioner Carter noted that it was his question as to why the COMMISSION does not regulate lobbying in order to change regulations, and would now ask is it material, would that provide pertinent information to the voters. Commissioner Carter is interested in finding out what kind of information might be gained by such regulations. The Chair would also like the commission to consider whether the lobbying regulations impinges on free speech, as well as keeping in mind constitutional issues, in addition to what happens on an administrative level.

Attorney Jeff Slayton said that if the commission is looking at how other cities are doing things the issues will be largely the same across jurisdictions, the legal challenges will likely be the same, and they will probably be around the first amendment to the US Constitution. Attorney Slayton noted that the track record of litigation with such cities would be profitable information as well. The Chair would like to look at San Francisco and Los Angeles more in depth since they are also part of the ninth circuit. The Director asked if there were any other cities that the commission would like to consider. Commissioner Taylor said that those two cities had the consulting disclosure requirements from what she remembered, and the Chair said that Los

Angeles has the disclosure requirement, but San Francisco regulates the relationship between consulting and lobbying. The Chair asked the Director if there were other cities he would recommend as comparable. If judging by size, either Austin, San Diego, or Washington DC might be more similar. Commissioner Angeles asked which cities have most recently changed their regulations. The Chair noted that New York City has been seen to be active in the field and the Director agreed, but noted that the scale of New York City was very different than Seattle.

Commissioner Brown asked what the lobbying fees would gain the commission in terms of resources, if for example 500 dollars were charged. The Director answered that there are around 80 lobbying organizations, so at 500 dollars each, it could possibly be up to 40K, but the Director cautioned that there are several smaller nonprofits who are retaining the lobbyists, and most of the cities tend to have bifurcated regulations that allow for nonprofits to pay smaller fees. Commissioner Carter asked if nonprofits were exempted from COMMISSION requirements and the Director answered that they are not. The Chair and the Director agreed that there could be more research into what cities were comparable and which had recently updated their laws. Attorney Slayton offered a caution that Washington DC might not be a good comparison since they have a unique type of local government with federal oversight. The Director noted that Chicago, while larger, could have some lessons to teach. The Chair asked the Director to look into other cities within the ninth circuit as well. The Chair then asked what budget request might be required if there were no fee, or even if the fee charge was enough to cover some of the costs, what would one FTE cost. The Director thinks it would be at least one FTE and gave a very general guess of cost between 70 and 100K. Attorney Slayton noted that this would be a recommendation to the council, and could also include a fiscal note.

Commissioner Taylor asked if that had to be done by a particular date and Attorney Slayton answered that it could be done at any time.

6) I-122 report

Program Manager René LeBeau informed the commission that the Democracy Voucher Program was about 20-21 days in from the initial voucher mailing. At this time in 2017 there were 26 candidates and 5 were in the voucher program. This year there are 50 candidates and 40 of the candidates are participating in the voucher program, 4 are qualified, and 5 are in process towards qualification. In 2017 at this time there were 3300 vouchers received and now we have over 17,500. The early vouchers that came back in 2017 were at a 72% success rate, this year they are at 91% and that number is expected to improve over time. The mailing officially went out on February 12, but due to the snow storm there were delivery delays. The majority of the vouchers are being returned through the mail currently and the interns have been very helpful and two temporary staff members started on Monday.

The online voucher portal is now live, 134 people have accessed the portal and 300 vouchers have been used online since the soft launch. Commissioner Carter said that he thinks it tremendous that there has been such a leap in the number of people who have been using the vouchers and using them correctly. The Chair asked from the 134 unique visitors there were how many vouchers assigned. 302 was the number of vouchers used confirmed by René LeBeau, and invoicing is planned for tomorrow for the four qualified candidates. Additional data will be made available as new queries are developed for the online portal data.

The first batch of candidate introductions were posted on the website and translated into 15 languages. 14 are posted currently, the next batch will be posted in the next few weeks. There

is also an instructional video on how to use the vouchers that is posted and translated into all languages. Commissioner Angeles asked whether we were seeing splits in voucher assignments, and LeBeau answered that we were largely seeing people assigning all of their vouchers to a particular candidate, and all four vouchers coming in at once. Commissioner Taylor asked if the portal could be accessed by someone without their vouchers in hand, if, for example, someone had recycled them accidentally. René LeBeau answered no, they could not bring their invite code up on the portal, but that they could reach out to the voucher program by mail, email or phone call and receive that invitation code again.

7) Executive Director's report

The Director welcomed Commissioner Taylor to her first official commission meeting, and noted that Richard Shordt was the selection of the city council and ideally, he'll be confirmed next Monday to fill the seat of Commissioner Angeles. The Director thanked Commissioner Angeles, and Commissioner Angeles said it was an honor to serve on the commission and said thank you to the staff for making the Democracy Voucher Program a reality. The Chair thanked Commissioner Angeles for her service.

Financial Interest Statements are currently being gathered, the link to the form has been sent out to all departments, and with 6 more weeks to go, roughly 30% of people have already filed. The Director noted that the online filing has really helped with timely filing.

The Director recently testified before the New York City Charter Review Commission with Alan Durning by Skype, along with a member of a campaign finance board, Sal Albanese, and Jennifer Herwig, and there was a good discussion and they are looking at vouchers.

Oral argument has been set for the challenge to the Democracy Voucher Program on May 14th in Port Townsend. The Director will know closer to the date what time of day and whether it will be broadcast live. Commissioner Angeles asked who would be representing the City. The Director answered that he believed it would be Greg Narver, Chief Civil Attorney. The Chair asked if they have seen all the briefings, and the Director asked Attorney Slayton if there had been additional briefing before the Supreme Court, and Attorney Slayton said that he wasn't sure if all the amicus briefings had been seen. The Director will send out a list of all the briefs filed to the commissioners.

The Regular Commission meeting of March 6, 2019 adjourned at 5:08 p.m.