

Seattle Ethics and Elections Commission Special Meeting

June 10, 2020

A special meeting of the Seattle Ethics and Elections Commission convened on June 10, 2020 remotely. Commission Chair Nick Brown called the meeting to order at 4:01 p.m. and Vice Chair Richard Shordt, along with Commissioners Bruce Carter, Brendan Donckers, Eileen Norton, and Susan Taylor were present by videoconference or telephone. Commissioner Hardeep Singh Rekhi was absent. Executive Director Wayne Barnett was joined by Assistant City Attorneys Teresa Chen and Gary Smith, along with staff members Chrissy Courtney, Polly Grow, René LeBeau, Marc Mayo, and Annie Tran.

Action Items

1) Appeal of dismissal in Case No. 20-1-0420-1

The Chair introduced the first item on the agenda, which was the appeal by Roger Valdez of the dismissal of his complaint against Councilmember Sawant. In addition to the documents provided by Mr. Valdez, there was an advisory opinion and a dismissal of a case from March 20, 2007 forwarded by the Director to the Commission. The Chair stated that the appellant would be allowed to speak, the commissioners would ask questions, and the Director would provide information on the dismissal. The Chair invited Mr. Valdez to provide background and any additional information the commission did not have. Mr. Valdez thanked the commission and noted that he was being joined by Matt Bolin, who owns a building on Capitol Hill, as a person who has experience as a housing provider to talk to the topic at hand. Mr. Valdez thanked the Director, the staff, and the commission for the meeting.

Mr. Valdez began by stating that when the Covid-19 crisis began, he was on the phone almost hourly with housing providers from Seattle, expressing their concerns, not about money,

although massive losses in income were looming, but how they would keep residents housed, and how long this crisis would persist, would they have to lay people off, and how would they pay their bills. Ms. Valdez continued that as eviction bans were imposed and housing providers were beginning to sort through the impacts of lost income, and how they could help their residents and themselves, Councilmember Sawant used city resources to encourage people to not pay their rent, whether they had income or not, in the form of a rent strike.

The phone calls Mr. Valdez received from housing providers were then not just about anxiety for the future, but outrage and anger, asking “how can a public official using resources I helped pay for try to put me out of business, isn’t that illegal, isn’t it wrong, isn’t it unethical?” Mr. Valdez stated that there were two issues in the documents; first, they believe the Councilmember violated her oath when she urged people to disobey Governor Inslee’s stay at home order, due to the public health concerns of spreading Covid-19 into the wider community. Second was regarding a rent strike, and Mr. Valdez argued that housing provider and resident relationships are legal contracts between business owner and customer, and the money to pay for cost of operations, maintenance, health, safety and debt service come from rent. He went on to say that to urge a person to contract for services, have those services fulfilled, and then refuse payment for those services would be a violation of the contract, and would harm both parties.

Mr. Valdez continued that the instigator of these illegal and harmful acts was an elected official, and he asked the commission whether they think a plain violation of oath and urging risk and damage to housing providers and residents is appropriate and ethical conduct, based on the Code that mandates their work, and the plain meaning of the word the people in this city observe. Mr. Valdez continued that as an elected official, Councilmember Sawant is charged with upholding the law even though she may want to change those laws she feels are unjust. Civil

disobedience assumes a violation of the law, upon an appeal to higher principles and accepting the consequences, but since the Councilmember encouraged other people to not pay rent, there is no consequence to her. Mr. Valdez noted that the Councilmember had the right to speak her mind as an elected official and she is obligated to do so, but she urged others to violate a lawful order and to harm businesses and did so using city resources during a period of anxiety and stress for millions of people in the region grappling with an unprecedented health crisis. Mr. Valdez continued that Councilmember Sawant should say what she thinks, but asking people to violate a legal order, and harm legal relationships and businesses during a crisis, using the platform and influence of public office and resources, was not protected speech but was unethical as described by the Code and in the plain view of the word. Mr. Valdez then asked if Mr. Bolin could speak.

The Chair thanked Mr. Valdez and said prior to hearing from Mr. Bolin, he would like to ask a clarifying question. There were two documents submitted to the commission, one was a tweet and one was a flyer. The Chair asked if Mr. Valdez could explain the use of city resources since it was not entirely clear from the documents themselves. Mr. Valdez said that the city logo was on the flyer and on the Councilmember's Facebook page as well as being distributed using her email account and he believed that one of her staff members promulgated that announcement using city email addresses and resources, and it was pretty clear Councilmember Sawant was doing this out of her council office, as a Councilmember, and Mr. Valdez indicated that Mr. Bolin could add more information for clarification.

The Chair said there is a distinction for any city employee doing something using their city owned email or city owned resource versus their private email or personal devices. The Chair noted that city resources could have been involved, it appeared the tweet was from a personal twitter account, but if Mr. Valdez had any information about the use of city resources

that would be important, that is a prerequisite for the specific violation that is being cited here.

Mr. Valdez said that he did not have any documentation regarding the city email address because he did not receive the email from her, but he is basing this on the information regarding the rent strike coming through her regular channels.

Mr. Bolin stated that Adam Ziemkowski from Councilmember Sawant's staff was cc'd on emails with Mr. Bolin's rent strikers and Mr. Bolin's understanding was that Mr. Ziemkowski was also actively involved in Zoom meetings with tenants calling themselves "The Collective". Mr. Bolin continued that Mr. Ziemkowski and Councilmember Sawant chose Mr. Bolin's building, the Ben Lomond apartments on Capitol Hill, as ground zero for the rent strike. Mr. Bolin stated that the May Day march the Councilmember initiated, which stopped at Amazon and then Cornell Associates, Mr. Bolin's property management company, were linked to the Councilmember's city website. Mr. Bolin stated that there was also a letter linked to Councilmember Sawant's website where he was misidentified as a megacorporation and he clarified that the Ben Lomond apartment building was his only property, and this disrupted his life and the life of his partner. Mr. Bolin said that this group of tenants were recruited and coached by Mr. Ziemkowski and Councilmember Sawant, and the tenants took it that they were being validated by an elected official and as an elected official the Councilmember should be held to a higher standard. Mr. Bolin continued that what finally stopped the rent strikes is that some of the tenants rose up and defended Mr. Bolin and he was recognized for being a good property owner, but he was down 25% in revenue. Mr. Bolin said that if you googled his name and KOMO news, the story misidentified the Ben Lomond apartments as a Cornell and Associates owned property, and there was an interview with one of the tenants who stated in the interview that out of solidarity with those who could not pay rent, they were not going to pay

rent. Mr. Bolin said that he reached out to KOMO to clarify that he was not a corporation, and they did a follow up story with him.

Mr. Valdez said that in regards to the Chair's intent to establish to the standards of the commission that the Councilmember did in fact use city resources, the flyer with the city logo and the regular email that she used were presented, but there is no screenshot of her government email being used, so they are relying upon the commission to judge based on their comments and testimony in addition to the images submitted.

The Chair said that his role was to have an understanding of the background of the complaint being brought before the commission so that they can properly evaluate it. The Chair stated that he wanted to clarify that there was a distinction between local and state law regarding ethics about what people do in their personal time and what people do using a government resource. The Chair noted that the testimony provided some indication that a city resource was used. The Chair said that before turning to the Executive Director he would like to ask the commissioners if they had any questions for Mr. Valdez or Mr. Bolin.

Commissioner Carter said that looking at the documents, an important aspect is the phrase "for other than a city purpose" and asked Mr. Valdez what defined the line between a city purpose versus something beyond that. Mr. Valdez said it was a broad category and when he looked at the code, it would be to advance discussion of debate or to advance city business. Mr. Valdez said that he thought there was wider discretion for an elected official, for example, if you were a staff employee, then a city purpose would not be to send something out to encourage others to vote one way or another, but he believed it had been established at a state and local law, that an elected official could do that. Mr. Valdez stated that the standard for the elected official in their position is to express opinions about public policy and what could be called politics, and

the problem here was not that Councilmember Sawant was expressing an opinion, it was that she was asking people to act in violation of state law, which goes back to her oath to uphold the state constitution and all the laws of the state of Washington.

Commissioner Carter asked if it was the view of Mr. Valdez that if the Councilmember disagreed with the Governor, she should not articulate that to the citizens. Mr. Valdez said no, she is obligated to, but urging them to violate the law using city resources is a very different thing. Mr. Valdez said that maybe the commission would not agree with the distinction, but to him, it was very different for the purposes of free speech to violate law and a different one when it is having a wider effect through the spread of disease, which was the underlying public health basis of the stay at home order, which Councilmember Sawant was violating.

The Chair asked if there were questions from Commissioners Donckers, Norton, or the Vice Chair, and there were none. Commissioner Taylor disclosed for the purpose of the record that she had some interest in residential real estate in the city of Seattle, but she did not think that would impact her objectivity. Commissioner Taylor then asked what Mr. Valdez thought the purpose of the rent strike was, and did he believe there was a political purpose to the rent strike. Mr. Valdez said he couldn't give any knowledge about Councilmember Sawant's true motive, but her stated motive was to disrupt the relationship between resident and housing provider, and it was very difficult for Mr. Valdez to understand the purpose of that disruption since it was not about expressing opinions but asserting control over other people's property in the name of a broader principle of public ownership of housing, and using city resources or not, that was a problem. Mr. Valdez said that he did believe the commission should establish whether Councilmember Sawant used city resources, but even if she were using her own private

resources, using her public authority and her office to encourage people to take things that didn't belong to them was still enough to establish that she was in violation of the code.

The Chair said that he wanted to highlight in his thinking so far, that there was a meaningful distinction between the two allegations put forth in the complaint, one encouraging people to not pay rent, and two, the violation of the governor's order. The Chair stated that during Covid, many elected officials were encouraging people to rally to protest the stay at home order, in Olympia and other jurisdictions, and violating that order has been encouraged by a number of officials. The Chair continued that in the last week or so, there were a number of officials in Seattle and elsewhere encouraging people to attend rallies to express themselves and their views about police brutality and related issues, and those sorts of encouragements of public participation might be different than encouraging people to not pay their rent. The Chair then asked the Director to walk the commission through the analysis that led to the dismissal.

The Director noted that he assumed for the sake of the dismissal that Councilmember Sawant used city resources, so if the commission were to overturn his dismissal then that would be a fact that would be investigated after that finding. The Director agreed with the Chair that there were two questions here, and he would like to keep them distinct. With regard to the stay at home order, the Director said he believed that what Mr. Valdez was talking about was a violation of the Councilmember's oath of office, which was a complaint heard back in 2017 when the Councilmember was encouraging people to protest the inauguration of President Trump. The commission at that time upheld the Director's dismissal, making it clear that the commission was not a tribunal that should be deciding whether someone has violated their oath of office. The Director noted that there were judicial processes in place for impeachment and he did not believe the seven member commission should be in the place of adjudicating whether or not someone

has violated their oath of office. The Director said that the role of the commission is to determine whether there is a violation of the ethics code which bars the use of public resources for other than a city purpose, and the root of that is in the section that says it is not use for private purposes. The Director stated that everyone has struggled with what it means to have a city purpose and for elected officials he believed the best way to think about it is that it is not for a personal or private purpose. With regards to the stay at home order, that was very much a public purpose, whether or not it was a city purpose remained for the commission to decide, but it was a topic of great public interest. The Director continued that in regard to the rent strike, it was important to acknowledge that right now rent is a political issue, and many Americans, more than 30 million individuals have been out of work for months on end. The Director referenced an article in the May 3rd New York Times that quoted Representative Alexandria Ocasio-Cortez supporting rent strikes, so it is a matter of public concern, so he didn't think the Councilmember went astray in urging people to participate in a rent strike as a matter of public concern. The Director said that there has long been an expansive view of what a public official can communicate about, in addition to the unanimously upheld dismissal of the complaint against Councilmember Sawant in 2017, last fall, there was a complaint against Councilmember Juarez's support for the "Live in D5" event that the event was not a city purpose that was dismissed and that dismissal was upheld by the commission. The Director cautioned the commission that if they did want to go that way, there would be a whole new layer of review that would likely be a surprise to both constituents and elected officials. There have been Councilmembers ask about communicating about a labor dispute and the Director said that he had not considered that a misuse of public resources to tweet out support. The Director noted that since Commissioner Donckers did not have a lot of time, he was yielding the floor for questions.

The Chair asked if Commissioner Donckers had any questions for the Director in light of his schedule, and he did not. The Vice Chair, and Commissioners Norton and Taylor also had no additional questions. Commissioner Carter asked the Director about the commission's history, noting that to him it seemed there had been a great deal of breadth in terms of the things the City Council has taken to speak about. Commissioner Carter stated that recently politics in India had been a topic, and also something about whether to take out dams from the Snake River, which was well beyond the city's borders and the city's direction or control. The Director agreed and stated that the example regarding the dams in eastern Washington was an excellent example, and similar was a Council action to weigh in on a natural gas pipeline in Tacoma, so the commission has allowed the Councilmembers broad license to speak on matters of public interest.

The Chair offered Mr. Valdez a chance to respond to the Director's comment. Mr. Valdez said that he thought the Director's comments were completely comprehensible to him, and he agreed that to be an arbiter of the content of speech by elected officials is a dangerous path to embark upon, and it was not something that the commission should take lightly. However, Mr. Valdez continued, he would fail to adequately represent the people he works for and with, if he did not express the distinction between the Bonneville dam, or the terminal in Tacoma, or politics in Southeast Asia, which is something that would be heard from other aggrieved parties in Seattle, with the view he hears from them. Mr. Valdez said that he hears from people that they are doing their jobs every day and they carry out that work with the best of intentions and try to work with people in distress during this period of Covid-19, and to have an elected official use city resources to try to undermine those relationships is very unfair. Mr. Valdez noted that it was a tough thing to draw distinctions using hypothetical examples, but Covid-19 has caused people to lose their incomes, but there hasn't been an urging to people to take food from grocery stores,

which would be unprecedented, but that was exactly what Councilmember Sawant was seen as doing with the rent strike, which is a very distinct thing from expressing an opinion about rent. Mr. Valdez continued that an elected person could go right up to the line of saying that if you're hungry and need food, you should just go and take it. That is essentially the view of those represented by this complaint, that the rent strike was the equivalent of a grocer seeing food removed from their shelves, at the urging of someone who is supposed to be a civic official. Again, Mr. Valdez stated that he understood the potential precedent that it would send to try to suppress political speech, but what was seen here was more sinister, by trying to cause people to contribute to a chaotic moment with more chaos and conflict when folks were already trying to sort through a difficult situation. Mr. Valdez ended his comments by saying that he appreciated and recognized where the commission had been and where they did not want to go.

The Chair thanked Mr. Valdez and said he did not think there was anything the commission needed to debate privately based on the records and testimony but asked if there were any commissioners who felt the need to speak to legal counsel, and there were none. The Chair then asked the commissioners if there were any other questions or comments.

Commissioner Donckers said that he understood the frustrations expressed, but he had not been convinced that there had been a specific violation for which the city ethics code was the proper vehicle for this complaint and there were other remedies available through other venues. Commissioner Carter said he concurred with Commissioner Donckers, the ultimate remedy for this kind of issue was with the voters, or a potential civil action if that was deemed appropriate.

The Vice Chair added that he also did not think that what the appellants were arguing was a violation of the ethics code and agreed with the Director that both of the issues that Councilmember Sawant was advocating for were political questions. The Vice Chair stated there

were calls to action as components of encouraging individuals to make either legislative or executive changes which may very well be a valid city purpose. The Chair concurred with his fellow commissioners and recognized that it was a challenging issue, and angering and frustrating for those impacted, but the issue of rent strikes, as the Director pointed out, was a political issue that has been nationally expressed and was certainly consistent with what the Chair understands to be the Councilmember's political viewpoint on these sorts of issues and he was leery of suggesting that the commission undertake the policing of this. The Chair moved to uphold the denial of the appeal, and Commissioner Norton seconded the motion. The commission voted unanimously to uphold the Director's dismissal. The Chair said he appreciated Mr. Valdez bringing this matter forward, and he appreciated his patience in getting the opportunity to have this matter heard by the commissioners under these circumstances and he appreciated Mr. Valdez's thoughtful approach to the information, but the request was denied. Mr. Valdez thanked the commission for their time getting this on the public record.

2) Contracting budget for Democracy Voucher Program outreach

The Chair turned to the second action item on the agenda, presented by René LeBeau. This item was from the commission meeting on March 4th, and Ms. LeBeau wanted to get the commission input on the increase of the funding for community based outreach from 150,000 up to 225,000 which would come entirely from the program budget and to expand the duration of the Requests for Proposal (RFPs). After speaking to staff, they are hoping to announce as early as July 6, knowing that the organizations locally have a lot of competing items they were working on, this should hopefully give them enough time to respond. The Chair asked if there were any questions from the commission, and there were none.

Commissioner Taylor asked if the website had been recently updated, she thought it looked really good. Ms. LeBeau said thank you, new FAQs are created as questions arise from the community, and said she would let Annie Tran, the program's website designer know.

Discussion Items

3) Democracy Voucher Program report

a. Status of Berk review

The BERK report draft should be received on Monday, and the final is due on June 29th. All surveys have been completed, there was a good volume in terms of responses, and Ms. LeBeau is looking at potential legislative changes, but at this time does not believe there are any but will be looking at possible programmatic changes based on the final report.

4) Executive Director's report

a. Staffing and Budget update

The Director briefly updated the commission on the staff and budget, with the Covid crisis, the executive has asked the department to provide cuts to the budget. The Director's plan, subject to commission approval or rejection of this plan, was to decline to offer any cuts. The commission office has fewer people than when it came out of the Great Recession, and the office is scrupulously tight with money, and has not grown to the extent of the rest of the city workforce. The Director does appreciate it is a time of shared sacrifice but being tasked with putting into place Council President González's new legislation barring corporations with foreign ownership from contributing to Seattle elections, and we are hopefully going to get a new lobbying law passed sometime this year, the only place that could be cut is personnel. The Director noted that there was very little in the way of non personnel costs in the budget, there was no travel, no training, and the only place to make cuts would be in staffing. If the commission is opposed, and they would like the Director to offer some reduction in staff then the

Director would do so, but he was not inclined to do so, because there are only 4.9 full time employees funded through the General Fund, keeping the voucher fund aside as there are no cuts to that funding source, there is just no capacity to get any leaner. The Chair asked if the request from the mayor was across the board agency-wise to set forth a certain level of cuts, or recommended cuts. The Director said he believed there were different targets given to different departments, but that for the commission office, any cuts would require cutting employee hours, and he did not see a path forward to making such cuts, especially not going into the 2021 elections, which are likely to be active. Commissioner Donckers indicated to the Chair that he would need to leave, but that he supported the Director in making no cuts to staff.

The Chair said he would defer to the Director to make that determination and that it made sense to him given the size and scope of the work. The Chair asked the commissioners if they had any other questions or comments regarding the personnel or staffing, and Commissioner Norton said she supported the Director's response. The Chair said that he did want to share with the commission that he had received emails directly from members of the public, upset that the commission was not meeting in violation of the stay at home orders and indicating that the commissioners should be doing so as elected officials.

The Director informed the commission that Annie Tran would soon be returning to the office after being lent to the Office of Economic Development (OED), as the voucher program approached the contracting process with the community based organizations, which Ms. Tran ran last year, and which she is needed to run again this year, and with the voucher program officially opening as of July 1 to candidates, the extraction of Ms. Tran from her temporary duties with OED was being orchestrated. Commissioner Norton asked who was paying for Ms. Tran's services while she was with OED, and the Director answered that it would be paid by OED. The

Director noted that in 2020, the office lost Shannon Leung and the Director also agreed to not hire for her IT specialist position until October 1st of 2020, and he also gave up the half position through the end of the year for the Administrative Specialist III, and the office cannot go without front desk support for more than the year they have already, and the tech position is critical in making sure that the website is capable of handling the amount of data that will be coming.

5) July meeting

The next meeting is scheduled for July 1st and the Director asked if the commission wanted to meet on the 1st, and whether they would like a more robust agenda, or would they like to hold off until meetings in person are allowed.

The Chair noted that for background, there were other items that could have been included today, but they wanted to keep today's agenda narrow as they worked through the technical challenges. The Director indicated that there was a pending enforcement proceeding involving Councilmember Sawant, for her use of public resources as a violation, for promoting or opposing a ballot measure and the Director did not know whether the commission wanted to do that remotely or in person. The order that was signed by the Chair originally said that the proceeding would take place after the expiration of the stay at home order, but now that there are phases, the Director asked if that thinking had changed, since the intent of that was that it would make more sense to do that when it would be possible to meet in person.

The Chair answered that when that order was signed in March, it seemed that things would be farther along than they were currently, and so was fine taking up the matter with a remote meeting and since that matter has been pending for some matter of months, he would like to hear it sooner rather than later. The Chair asked if there were any comments or concerns about meeting on July 1st. Commissioner Taylor said she would be in favor of meeting remotely on

July 1st. The Vice Chair said that he would be traveling but should be able to call in, and also thinks it makes sense to take up the matter sooner rather than later. Commissioner Carter said he should also be available on July 1st, and Commissioner Norton said she would be available on July 1st and will try to get Skype to work before then. The Chair said he would like to keep it scheduled for now and would talk with the Director about keeping the agenda fairly narrow until meetings can be held in person.

The Director said that ideally the BERK report would be available for that meeting as well. Ms. LeBeau asked if there was any action that needed to be taken on the CBO increase requested. The Chair and the Director believed that there was consensus with spending up to 225,000 on community based organizations was consistent with prior discussions, and the increase was approved. The Chair asked if there were any further items.

The Director stated that Commissioner Rekhi has been nominated to succeed Commissioner Norton, who has ably served the commission for two terms. The Chair thanked the staff and everyone for their participation and was glad that the meeting went smoothly and called the meeting to a close.

The Special Commission meeting of June 10, 2020 adjourned at 5:16 p.m.