

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

**December 19, 2018**

A special meeting of the Seattle Ethics and Elections Commission convened on December 19, 2018 in Room 4096 of the Seattle Municipal Tower, 700 Fifth Avenue.

Commission Chair Brendan Donckers called the meeting to order at 4:00 p.m. Commissioners Charlene Angeles, and Nick Brown were present. Vice Chair Vickie Rawlins and

Commissioners Eileen Norton and Hardeep Singh Rekhi participated via telephone.

Commissioner Bruce Carter was absent. Executive Director Wayne Barnett was joined by staff members Polly Grow, René LeBeau, Marc Mayo, Annie Tran, Chrissy Courtney. Assistant City Attorneys Jeff Slayton and Gary Smith were also in attendance. Commissioner Brown had to leave at approximately 4:50 p.m.

### **1) Public Comment**

Alex Tsimerman provided public comment.

### **Action Items**

#### **2) Minutes of October 2, 2018 Regular meeting**

#### **3) Minutes of November 6, 2018 Special meeting**

The minutes from the two previous meetings were reviewed together. Commissioner Norton moved to approve the meeting minutes. Commissioner Brown seconded. No edits or comments were requested. Both sets of meeting minutes were unanimously approved.

#### **4) Confirmation of new staff member**

The Director introduced Chrissy Courtney as the newest hire in the position of Administrative Assistant, provided a copy of her resume to the Commissioners, and asked for

their confirmation of her hiring. Commissioner Norton moved to confirm, Commissioner Angeles seconded the motion and the vote to confirm was unanimous.

### **5) Executive Director's merit leave determination**

The Director presented the criteria for the Commissioners to award merit leave days. The leave options available to the Commission are in four levels. Level 3 performs consistently beyond expectations on every targeted objective, Level 2 is meets and regularly substantively exceeds targeted objectives, Level 1 is performance consistently achieves the targeted objectives, and Level 0 is performance that is not acceptable. The Director said that he believed there had been good work done in the past year, which included the changes to I-122, which were achieved before the election cycle began, Facebook and Google violations were addressed, and there were two new hires in this past year, in the Administrative Assistant position and the Web Developer position.

Attorney Jeff Slayton asked if the Director was part of the APEX system, and when the Director confirmed that he was, Mr. Slayton then asked if the Board was also supposed to approve the percentage increase for the Director at this time. The Director indicated that due to a lack of an approved Annual Wage Increase (AWI), the advice has been to wait until those negotiations are completed before contemplating any wage increases.

The Chair said that last year the Director was awarded a Level 3, six-day merit leave award, which the Director confirmed. The Chair then asked the attorneys whether the Board could go into Executive Session to encourage candor and Mr. Slayton confirmed they could go into executive session to discuss performance, but the final determination and award would need to be done in open session. The Chair suggested that Item 6 would also merit an Executive

Session, and indicated he would like to consider both Items 5 and 6 during Executive Session and then make final determinations on both in open session.

Commissioner Brown questioned whether the merit leave criteria was a citywide set of criteria for all management at the same level as Director Barnett, and the Director said that yes, the criteria came from SDHR, and Attorney Gary Smith confirmed. Commissioner Brown asked whether there was a set of targeted objectives that start out the year for the Director, such as a work plan. The Director said that historically, there has been no formal written set of tasks, but there was no reason such a work plan could not be implemented. Commissioner Brown said that he thought perhaps in future it might be helpful to identify the objectives in advance, to be able to better judge whether the achievements have simply been met or whether expectations were exceeded. Commissioner Angeles noted that while the targets for the year were not specifically written into a work plan, there was an agenda, and the items on that agenda were discussed in the monthly meetings. The Chair noted that coming out of the 2017 election cycle during the monthly meetings the general expectations were discussed, but not formally written down, and indicated that Commissioner Brown made an interesting point and more discussion could be had regarding this issue. Commissioners Rehki, Norton, and Rawlins had no comments.

#### **6) Consideration of candidates for the Commission opening**

The Chair indicated that he would like to have a brief open discussion regarding the candidates and the process of appointing a new commissioner. The Director said that the last time the position was filled was when Commissioner Rawlins was the choice of the Commission. The Director noted that there can be some awkwardness due to the public nature of the decision making, but the process traditionally, at least the last two times, has been for the Commission to

narrow the list of applicants to a few individuals they would like to interview. The finalists are interviewed at the January meeting and at the conclusion of that meeting, the Commissioners choose who they would like to select for the position. The Chair clarified that this was for the one seat that the Commission is entitled to appoint, the others are driven by the Mayor's office and the City Council. The Director confirmed that clarification and informed the Commissioners that he had forwarded the seven applications to the City Council President as well, since they were also actively seeking to appoint a replacement commissioner. Commissioner Brown asked whether the number and type of applicants was typical. The Director indicated it was, and that the seat has tended to be held by someone with a background in ethics in the private business world. The Chair requested an executive session at approximately 4:15 p.m. to last until 4:45 p.m. Mr. Slayton questioned whether the Director should be absent for the duration of the Executive Session or whether they wanted him to join part way through. The Commission decided they would prefer the Director to be absent during the Executive Session. The Executive Session lasted until 4:43 p.m. when the Chair called the open session to resume.

The Chair said the first item discussed was the Director's performance in the past year. Commissioner Brown moved to approve a Level 3 award of a six-day merit award. Commissioner Norton seconded. Commissioner Brown noted that he believed that specific goal setting measures in future would be prudent, possibly offline, if time allows prior to the next commission meeting. Commissioner Angeles said thank you for all the work of the last year, and really the last three years, due to the work of the Director and the staff and she hoped that next year will be as great. The motion to award a Level 3 six-days merit leave to the Director passed unanimously. The Director thanked the Commissioners.

The Chair said the second item discussed in Executive Session was the applications for the commission appointed commissioner. Commissioner Angeles moved to have the Commission invite four candidates to come interview; Elizabeth Partington, Richard Shordt, Susan Taylor and Jacquelyn Martin. Commissioner Norton seconded. No further discussion. The motion to invite the four candidates passed unanimously. The Director said he would notify all the candidates and ask the four selected to appear before the Commission at the next meeting. Commissioner Brown then asked if there was a requirement that a Commissioner be a Seattle voter or resident. The Director said there was not, but he could only think of one that was not a Seattle resident, historically, and that it would be unusual. Commissioner Angeles indicated that she believes that there is a condition in code that requires a commissioner to either work or live in Seattle.

#### **7) Election of Officers**

The Chair preferred to wait until January when a full commission will be available to elect officers but asked the commission whether they would rather decide during the current meeting. Commissioner Brown asked if there was anything in the bylaws that would require a specific time for the election of officers. The Director consulted the administrative rules, which say “The Commission shall elect a Chair and Vice Chair annually, to take office on January 1 of the following year.” In past, the decisions have been made during either December or January. Commissioner Angeles agreed with waiting until the January meeting, so that Commissioner Carter would be available. Hearing no dissent, the Chair agreed and moved the elections to the January agenda.

#### **Discussion Items**

## **8) Rulemaking**

The Director said that after the last meeting, when the Commission endorsed the creation of the candidate introductory statement, staff had worked to create rules to administer the candidate introductory statement. The statements will be offered to all candidates whether they will be a voucher program participant or not. The introductory candidate statement is intended to be a benefit to the citizens who will be deciding on assigning their vouchers. The Commission had previously considered the question of whether or not the voters' pamphlet should indicate whether a candidate is participating in the voucher program, which raised some concerns among the commissioners. The question is brought forward now whether there should be an explicit avoidance of seeming to endorse any candidates whether they participate in the democracy voucher program or not. Commissioner Angeles asked if the past commissioners were concerned about giving the impression of influencing the vote. The Director confirmed that yes, in the case of the voter's pamphlet, that was the concern. The Chair said that there was likely a concern about seeming to endorse a candidate simply because they participate in the Democracy Voucher Program. The Director reminded the Commission that the proposed rules cannot be voted upon yet, but are being presented for discussion and consideration in anticipation of the January meeting.

Commissioner Norton asked if the lawyers had any thoughts to share and Attorney Gary Smith said that any rules or restrictions that are reasonable and viewpoint neutral are allowable, within limited public forums, which is a designation that would apply to both the voter's pamphlet and the introductory candidate statement. The Chair asked if there was a concern about public speech. Mr. Smith said that he believed there was a case for allowing the indicator to be shown in the introductory statement. Commissioner Brown asked if there was something that

would mislead or confuse a voter by not specifying which candidates were participating in the Democracy Voucher Program.

René LeBeau, the Democracy Voucher Program Manager, offered that the intent was to provide the voucher user a single place to know whether a candidate participates in the voucher program or not, to ease use of vouchers and increase access to the vouchers, without wanting to influence the voter in any way. The Chair wondered if there was a way to tie the participation more directly to a particular candidate, and Commissioners Brown and Norton asked if there is a separate place, perhaps on the web, to house this information. Commissioner Angeles mentioned that the prior commission concerns regarding endorsement are more minimal now and the upside of making sure that the democracy vouchers are being used effectively is more important at this time. The initial recommendation of simply indicating whether the candidates are participating in the voucher program or not was not a problem for Commissioner Angeles, but she would be interested in listening to public comment on the matter.

The Director pointed out that this will be a staff determination as to when to indicate whether someone is participating within the democracy voucher program, because a candidate could join the program initially, be identified in the program materials, and then drop out at a later date. Commissioner Norton liked the idea of sending the voters to a separate place where an updated list of participating candidates is kept up to date. General discussion as to whether there should be one repository of the most up to date list of candidates participating in the program at the time of checking the list did not bring any consensus, but there will be further review.

The Chair was interested explicitly in sections 2b and 4a, which allows the Director the ability to change candidate statements, which has implications for free speech in terms of the

editorial impact, and the Chair was reluctant to curtail political speech. The Director pointed out that any candidate is able to appeal any edit made by the Director to the Commission. The Director also pointed out that the intention of the rule is to make clear to candidates that typos or misspellings provided by the candidates would stay within the statements, and would not be copy edited by the staff. The Chair noted that he was thinking of specific purposeful misspellings that indicate a particular political leaning. Commissioner Angeles asked who manages the statements and the Director confirmed that the Seattle Ethics and Elections Commission does administer the candidate statements. Commissioner Angeles asked whether the language in these rules comes from the voters' pamphlet rules, and the Director confirmed that it did mirror those rules. Commissioner Norton asked about situations where a statement is submitted, and it is over the length allowed, are there other ways to handle that, such as returning the statement to the campaign candidate for editing. General discussion indicated that there could be different ways to handle these types of situations. The Chair requested that Mr. Smith provide the Commission with some similar cases for review in advance of any decisions.

#### **9) I-122 report**

René LeBeau presented an update saying that the online go live date for the Democracy Voucher Program is still on target for February 12, 2019.

There were 12 applications received from a variety of community organizations to support outreach education events to Seattle residents regarding the Democracy Voucher Program and the 2019 elections for a total of \$240,000. Scoring and review of the proposals is under way for the existing Jan 11, 2019 deadline.



There are also updated brochures, and an updated voucher envelope, based on feedback that has been incorporated from several sources in terms of the design changes. These changes include a call to action, an image of the voucher, and inside the voucher packet there will be a business reply envelope, and updates to the vouchers itself include instructions on how to use the vouchers, whether on paper or online. The insert now contains Frequently Asked Questions and a summary of the 2017 voucher campaign impact. An additional indicator was added to the physical vouchers to count them 1 through 4, and added to the front of the vouchers is the district of the voter to which it is sent. Commissioner Angeles was concerned the district indicator might lead the voter to believe they might have to use the voucher only within their district. Ms. LeBeau indicated that concern was considered and there were statements incorporated in order to clarify that the vouchers can be used for candidates in any district.

There are currently eight pledged candidates, and they are listed on the Democracy Voucher website. The vouchers will be mailed February 12, 2019 and there around 460,000 active voters who will receive the vouchers and around 40,000 postcards will be sent to the inactive voters, based on the most recent file from the King County Elections.

The online system is being developed; a third party is helping with the authentication of the user, that vendor is Trulioo and the verification will be done against the Social Security Number. There is also a third party who is contracted to assist with the development of the online vouchers.

Annie Tran informed the Commission that out of 19 total applicants, three people were interviewed, and two interns have been hired for the year starting January 9, 2019. One

undergrad and one graduate student were hired to help develop social media and outreach programs, and they will also help with a variety of voucher related activities.

During the last year there were about 10 community organizations that were working with the voucher staff as an advisory committee to begin the year but by the end of the year there were about three regularly active members, so a call for new members was put out, and there will be four new members added to the advisory committee. There was a mix of candidates and they bring different skills to the table, and will be joining the advisory committee in January.

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

The Director inquired which Commissioners will need parking passes for the coming year, and Commissioners Angeles, Rehki, and Carter will be provided parking pass applications, the remainder of the Commissioners declined the offer for parking passes.

The recent Council on Governmental Ethics Laws (COGEL) conference in Philadelphia was a success; the Director presented on a panel regarding the Democracy Voucher Program along with Amy Loprest, the Executive Director for the New York City Campaign Finance Board, and Jennifer Heerwig, Professor of Sociology at Stony Brook University. Commissioner Angeles asked what efforts were going on in New York City in terms of looking into a voucher program. The Director indicated that his impression was that several cities were watching how things go in Seattle, and those cities with strong matching programs, like New York City, have little stomach to move towards voucher programs at this time, but that there were some hybrid matching program and voucher ideas that had been floated.

The Chair said that he was contacted by the media regarding a proposed idea from former Commissioner David Mendoza, who suggested that the Commission look at the rules and

policies around campaign consultants and lobbyists and the constitutional rights to petition and free speech in terms of donating time, and transparency issues and undue influence issues. The Chair does not believe that a specific statement was agreed upon by the Commission in the past but there was general discussion, and the Chair wanted to share with the Commission that he was contacted regarding the issue, as was the Director, and the Chair asked if the Director had anything to add.

The Director said that he spoke with the people in Alaska and Maryland, as well as his counterpart in San Francisco, since these were programs mentioned by Mr. Mendoza, in order to try to find some useful guidance regarding their provisions, but there was little offered from those sources. The work plan for 2018 did not allow for the time to pursue the matter further, but if this is something that the Commission wants to pursue, they should let the Director know.

Regarding the ongoing legal challenge to the Democracy Voucher Program, Mike Ryan and the Director met briefly, and the Appellate Court certified the case to the Washington State Supreme Court, and the Supreme Court has the discretionary appeal at this time. The case could be argued as soon as this spring. Commissioner Angeles asked how long it takes the Supreme Court to decide whether they will hear the case. The Chair responded and Gary Smith concurred that it could be many months. The case has been with the appellate court for several months already.

**The special Commission meeting for December 19, 2018 adjourned at 4:58 p.m.**