

Subject: Formal Complaint

Description:

Hi Wayne,

Enclosed please find a formal complaint and request for an investigation. By copy of this email, supplementing my existing complaint numbers 41179,41181,41182,41183,41184,41185,41186,41188, and 41189 with the Public Disclosure Commission.

Thank you,

Lincoln

Barnett, Wayne (Mon, 8 Oct at 9:07 AM)

to : lincolnb@connelly-law.com , cc : pdc@pdc.wa.gov, singh.hardeep%2bseec@gmail.com

Confirming receipt, Lincoln.

We'll be in touch.

Best,
Wayne



Wayne Barnett

Executive Director

Seattle Ethics and Elections Commission

O: 206.684.8577 | M: 206.503.0632 | wayne.barnett@seattle.gov

www.seattle.gov/ethics

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October 6, 2018

Via Email Attachment

Wayne Barnett
Executive Director of the Seattle Ethics & Elections Commission
Seattle Municipal Tower
700 5th Ave, Suite 4010
Seattle, WA

RE: Ethics Complaint — Misuse of Public Resources for Personal Gain

Dear Mr. Barnett:

Pursuant to Seattle Municipal Code 4.16.090, as a taxpaying citizen of the City of Seattle, I am writing to lodge a formal complaint and request for investigation against Mayor Jenny Durkan and the entire City Council for violating the local and state ethics laws.

Specifically, the elected officials at issue violated the laws by (1) using the resources of the Seattle City Attorney's Office in order to protect what they self-describe as "personal" and "political" interests, and (2) engaging the enclosed \$145,000 contract to retain private legal counsel for that same purpose. The facts are summarized by the Seattle Times:

Disputes rage on in lawsuit claiming Seattle City Council broke law on head-tax repeal

Originally published October 5, 2018 at 6:00 am Updated October 5, 2018 at 4:29 pm

A judge will consider next week whether polling data and other communications by city officials related to Seattle's ill-fated head tax should be kept under wraps or publicly disclosed in a civil suit accusing council members of breaking a state law aimed at ensuring their decisions on city business are made openly.

Lawyers for James Egan, one of two men now suing the city for allegedly violating the Open Public Meetings Act (OPMA) in the lead-up to the City Council's sudden

repeal of the controversial tax, argue in pleadings filed this week that the city is improperly withholding polling data and other records despite a court order to turn over relevant records by Sept. 28.

“(T)he City’s elected leaders are knowingly continuing a pattern of discovery evasiveness,” lawyers Lincoln Beauregard and Julie Kays contend in a motion asking the court to hold the city in contempt.

City Attorney Pete Holmes and David Bruce, a \$395-an-hour private lawyer whose firm was hired this week to assist in the city’s defense, counter in their own motion the records in question reflect city officials’ “personal political activity and other private matters” — not city business — so aren’t subject to disclosure.

The city wants the court to grant an order protecting the records and asks that a special master be appointed to manage further discovery disputes, “in an effort to ensure that Seattle’s scarce public resources may be devoted to actual civic problems of the day — like homelessness — rather than expansive litigation over a technical application of the OPMA.”

Egan also seeks to force EMC Research to comply with a subpoena for its head-tax polling data. An attorney for EMC has objected, calling Egan’s subpoena “oppressive, harassing, overbroad (and) unduly burdensome.”

King County Superior Court Judge Timothy Bradshaw could rule on all motions by next Thursday.

At the center of the latest scrum over records is EMC’s polling data generated for Bring Seattle Home, a political campaign formed to oppose the big business-backed No Tax on Jobs referendum that sought to overturn the head tax.

Previously disclosed city text messages show SEIU Local 775 President David Rolf, whose union bankrolled Bring Seattle Home, briefed several council members and Mayor Jenny Durkan’s top deputies about EMC’s unfavorable polling on the tax the weekend before the council repealed it.

Through a series of phone calls and texts, Durkan’s deputies then privately lined up a majority of council members for a repeal effort, records show. The mayor and seven of the council’s nine members later issued a joint statement justifying consideration of a reversal on the so-called Employee Hours Tax, which had been approved unanimously less than a month earlier. The council ultimately voted 7-2 in a public meeting to repeal the \$275-per-employee tax on large businesses that aimed to raise an estimated \$47 million annually for housing and homeless services.

Egan and open government activist Arthur West separately later sued, arguing the behind-the-scenes dealings predetermined the public vote, breaking the meetings law that prohibits a government body’s quorum from making decisions in private.

The city denies it broke the law, calling the pre-vote maneuverings in court papers “the normal everyday stuff of legislating.”

Disclosure of records has become a sore point, with Egan’s lawyers previously accusing the city of deliberately withholding “smoking gun” documents in hopes of settling the case before having to disclose them. After an initial Aug. 8 discovery deadline, Holmes’ office parceled out more than 34,000 documents amid protests of foot-dragging by Egan’s lawyers. Bradshaw last month ordered the city to disclose all records “as soon as possible,” and no later than last Friday.

The city met the deadline 42 minutes before close of business on Friday by disclosing another 1,103 documents. But city attorneys noted in court papers they weren’t turning over any “campaign/ballot measure-related documents” contained on city officials’ private devices or servers, arguing those records are private and not relevant.

Egan’s pleadings cite texts sent shortly after the polling briefing in which Councilmember M. Lorena González and an aide discussed a plan by Durkan’s deputies for “triangulating” the polling results among council members with the goal to “have unity on a repeal.”

“The related polling data played an integral role in the decision to repeal the head tax,” Egan’s lawyers argue.

Holmes and Bruce counter that city officials’ “private political activity” is outside of city control and didn’t become official business until “sometime over the weekend of June 9-10.”

Before that, records reflecting their discussions on personal devices and servers “are not — and cannot be — relevant or reasonably calculated to lead to the discovery of admissible evidence in this matter,” they contend.

Bruce and his law firm — contributors to Holmes’ re-election campaign last year — will be paid up to \$145,000 for helping with the case, according to a city contract. It’s the 21st time Holmes has hired the firm since he took office in 2010. Holmes last year denied any quid-pro-quo when hiring outside lawyers, saying he does so as needed based on track record and expertise.

Lewis Kamb: 206-464-2932 or lkamb@seattletimes.com; on Twitter: @lewiskamb.

To summarize, the City’s elected officials are claiming that the information at issue, such as the EMC polling data, is of a purely “political” and/or “personal” nature, and therefore exempt from public view. The City’s taxpayers have no incentive to fund the legal expenses associated with perpetuating these arguments. By admission, the elected officials are using public resources for personal benefit. To the extent that the elected officials seek to protect “personal” and/or “political” information, they are required to use their own funds, or perhaps ask Bring Seattle

Home to pay. These actions violated the following ethics rules: SMC 2.04.300¹, SMC 4.16.070², RCW 42.17A.555³, RCW 42.23.070⁴, and perhaps others.

¹ SMC 2.04.300 - Prohibition against use of public office facilities in campaigns.

No elected official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include but are not limited to use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the officer or agency; provided, that the foregoing provisions of this section shall not apply to the following activities:

A. Action taken at an open public meeting by the City Council to express a collective decision or to actually vote upon a motion, proposal, resolution, order or ordinance, or to support or oppose a ballot proposition so long as (1) any required notice of the meeting includes the title and number of the ballot proposition, and (2) members of the City Council or members of the public are afforded an approximate equal opportunity for the expression of an opposing view;

B. A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry; and

C. Activities that are part of the normal and regular conduct of the office or agency.

² SMC 4.16.070(B) – Improper Use of Official Position

A covered individual may not engage in any of the following acts:

* * *

1. Use or attempt to use his or her official position for a purpose that is, or could to a reasonable persona appear to be, primarily for the private benefit of the covered individual or any other persona, rather than primarily for the benefit of the City, except as permitted by Section 4.16.071;
2. Use or attempt to use, or permit the use of any City funds, property, or personnel, for a purpose which is, or to a reasonable person would appear to be, for other than a City purpose, except as permitted by Section 4.16.071; provided, that nothing shall prevent the private use of City property which is available on equal terms to the public generally (such as the use of library books or tennis courts), the use of City property in accordance with municipal policy for the conduct of official City business (such as the use of a City automobile), if in fact the property is used appropriately; or the use of the City property for participation of the City or its official in activities of associations that include other governments or governmental officials.

³ RCW 42.17A.555:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to

October 6, 2018

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I respectfully request a full investigation into these matters. Thank you.

Very truly yours,

Lincoln C. Beauregard

Lincoln Beauregard

Enclosure:

Contract for Private Counsel

Declaration of Pete Holmes

cc: Washington Public Disclosure Commission
Commissioner Hardeep Rehki
All Counsel

support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

(4) This section does not apply to any person who is a state officer or state employee as defined in RCW 42.52.010.

⁴ **RCW 42.23.070:**

(1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.

(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.



Seattle City Attorney

Peter S. Holmes

Gregory C. Narver
Civil Division Chief
(206) 684-8233
gregory.narver@seattle.gov

October 3, 2018

Via email only to dbruce@sbwllp.com

David N. Bruce
Savitt Bruce & Willey LLP
1425 Fourth Avenue, Suite 800
Seattle, WA 98101-2272

Re: Legal representation in *Egan v. City of Seattle/West v. Seattle City Council* (consolidated); King County No. 18-2-14942-8 SEA

Dear Mr. Bruce:

I am writing to confirm our agreement for you to provide legal representation for the City of Seattle in the above matter. Hourly billing rates for this matter are as follows:

David Bruce	\$395
Stephen Willey	\$395
Jim Savitt	\$395
Michele Stephen	\$335
Emmelyn Hart	\$305
Gabby Sanders (paralegal)	\$145

Any changes to billing rates must be pre-approved by this office. Out-of-pocket expenses will be covered at cost. Your fees and costs will be paid monthly upon the City's receipt of an itemized bill. Your initial work is not exceed \$145,000 without further authorization from this office. This agreement supersedes previous agreement on this matter, if any.

We are including for your review and retention a statement of the City's billing and outside counsel procedures (Attachment A), which are incorporated into this agreement. These procedures contain standard language that is required by the City's contracting ordinances, as well as terms required by the City Attorney.

David N. Bruce
Savitt Bruce & Willey LLP
October 3, 2018
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Gary Smith will be your primary contact in the City Attorney's Office, and invoices on this matter may be sent to his attention. If you accept this arrangement, please sign below and return to me. Feel free to contact me if you have questions regarding the nature of this engagement or City procedure.

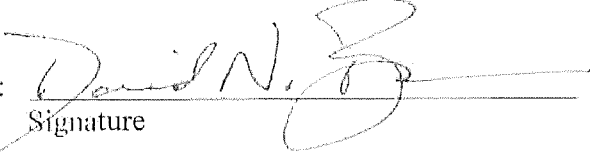
We look forward to working with you.

Very truly yours,

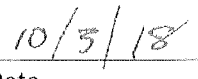
PETER S. HOLMES
Seattle City Attorney

By: 
Gregory C. Narver
Civil Division Chief

Attachment

Accepted by: 
Signature

Printed Name


Date

**Seattle City Attorney
Outside Counsel General Terms and Billing Procedures
Attachment A**

As used in this Attachment A, “Outside Counsel” means any individual lawyer, other than an employee of the City of Seattle, or any law firm hired by the Seattle City Attorney to provide legal advice and representation to the City of Seattle and/or officers and employees of the City of Seattle.

I. Interaction with City

- A. The City Attorney¹ must be given advance notice of any significant decisions in order to be able to participate fully in making such decisions.
- B. The City Attorney must be provided with advance drafts of all significant documents (policy statements, pleadings, memoranda) in sufficient time to be able to participate fully in decisions regarding such documents.
- C. The City Attorney must routinely receive copies of all other documents, including correspondence and internal legal memoranda.
- D. The City Attorney must fully participate in all deliberations and decisions regarding possible settlement of a case.
- E. The City Attorney must participate in the selection of all consultants or experts. No subcontracting is permitted under this contract without the specific authorization of the City Attorney, and compliance with the relevant provisions of Chapter 20.42 Seattle Municipal Code.
- F. Provisions of this section may be modified to the extent necessary to comply with RPC 1.6 when there is a conflict between an individual employee represented by Outside Counsel and the City. In those circumstances, the City recognizes Outside Counsel’s duties under RPC 1.8(f).

II. Potential Conflicts of Interest

- A. Outside Counsel will be deemed to represent the entire City and all its departments, agencies, branches, boards, commissions and offices, unless specifically notified otherwise. Outside Counsel retained by the City to

¹ References in this document to obligations and rights of the City Attorney shall in most cases be made by the Assistant City Attorney or other member of the Law Department identified by the City Attorney. Outside counsel may, however, contact the City Attorney directly whenever warranted.

represent individual employees pursuant to SMC 4.64 are deemed to represent both the individual employee and the City for purposes of determining whether a conflict of interest exists.

B. In each instance where Outside Counsel becomes aware that there may arise, that there is, or that there may be an actual or potential conflict of interest, Outside Counsel will promptly notify the City Attorney in writing and seek written waivers from the City Attorney and the individual employee represented pursuant to SMC 4.64 as appropriate under RPC 1.8(f) as soon as possible. The City Attorney may waive potential conflicts that do not involve the subject matter for which Outside Counsel has been engaged, but reserves the right to decline to waive a real or potential conflict in each case. Outside Counsel will not engage in conduct which presents a real or potential conflict of interest unless the City Attorney waives the conflict or potential conflict. The City Attorney will not issue blanket waivers.

C. Conflicts of interest include:

1. Conflicts described in the Rules of Professional Conduct;
2. Situations in which Outside Counsel or any of its agents or subcontractors participate in or benefit from a transaction upon which Outside Counsel has provided or is providing advice, except for payments for Outside Counsel's legal services under this Agreement;
3. Situations in which Outside Counsel provides advice or participates in any transaction that is, or would appear to a reasonable person to be, in conflict or incompatible with the proper duties of the Outside Counsel as provided in its contract, or which would affect, or would appear to a reasonable person to affect, the independent judgment of Outside Counsel.
4. Any similar situation that interferes with Outside Counsel's ability to fairly and impartially advise the City and its officers or employees, or would appear to a reasonable person to do so.

III. Confidential Communication

All communications relating to the representation of the City and its employees between Outside Counsel and the City, its officers, employees or agents, whether oral or written, and all documentation whether prepared by Outside Counsel or the City shall be considered confidential and shall not be disclosed except by the written consent of the City Attorney and/or an individual employee represented pursuant to SMC 4.64 as appropriate under RPC 1.6.

IV. City Code of Ethics and Professional Conduct

- A. The reputation of the City and its officers and employees is of high importance to the City. All counsel representing the City and its officers and employees are expected to maintain high standards of professional conduct and must behave at all times throughout the representation with integrity.
- B. Outside Counsel shall comply with all provisions of the Seattle City Code of Ethics (Seattle Municipal Code Title 4 Chapter 16) applicable to Outside Counsel.
- C. Outside Counsel shall be mindful of the requirements of SMC 4.16.070(3) in providing any free legal services to individual City employees and should notify the City Attorney in advance of providing any free legal services to individual City employees.

V. Billing Procedures for Outside Counsel

- A. Billings by Outside Counsel must be submitted on a monthly basis and will be paid within thirty (30) days of submittal.
- B. Unless otherwise agreed upon in advance in writing, the City will be charged for services rendered on an hourly basis and billings will be reflected in increments of one-quarter of an hour or less.
- C. Approved out-of-pocket expenses will be reimbursed at cost.
- D. Each billing statement must be set forth for each date services were performed and the following:
 - (1) A brief summary of the services provided specified by task; block billing is not acceptable;
 - (2) The number of hours, or fractions of hours, spent by each provider;
 - (3) The hourly rates of each of the providers;
 - (4) Any costs or expenses submitted for reimbursement must be verifiable with an invoice or other back-up documentation. Expenses and disbursements must be described in detail and comply with the following:
 - (a) Air travel must be approved by the City in advance and is reimbursable at coach rates;

- (b) Other travel expense reimbursement will be consistent with the requirements of SMC 4.72.010 governing travel expenses for City employees;
- (c) The City must not be charged for courier service or other expedited mail delivery unless the urgency was caused by the City or the City requests the service;
- (d) The City will not pay for computer research provider costs;
- (e) The City will not pay costs that should be part of the firm's overhead such as phone calls, copies, courier services and postage;
- (5) Billings for experts or consultants retained by Outside Counsel must be provided in substantially similar format as outlined above;
- (6) Outside Counsel bills are subject to public disclosure. Outside Counsel should avoid including privileged information in billings that would have to be redacted in the event of a public disclosure request.
- E. Any changes in Outside Counsel's fee schedule must be discussed with the City Attorney prior to implementation.
- F. Outside Counsel has been retained because of its expertise. The City must not be billed for basic general legal or technical research necessary to educate staff or less experienced attorneys in the firm. Any extensive legal research proposed by Outside Counsel must be discussed in advance with the City Attorney and is subject to the City Attorney's approval.
- G. The City must not be billed for any time spent in preparing or reviewing the firm's billings to the City or in internal firm quality control procedures.
- H. Unless approved in advance, the City will not reimburse for time spent by more than one attorney attending meetings, witness interviews, depositions, hearings and the like.
- I. Outside Counsel will keep accurate records and books for all work provided under this agreement with the City. At the City's request and at the City's cost, Outside Counsel will permit the City to inspect and audit all pertinent books and records of counsel related to the work performed for and charged to the City, at any and all times deemed necessary by the City, including up to six years after the final payment or release of withheld amounts has been made under this agreement.

VI. Audit

Outside Counsel must keep adequate and accurate records supporting all amounts invoiced to the City, and must maintain such records for at least six years following completion of any work. Outside Counsel shall allow the City Auditor to review and audit all records relating to services provided under the contract with the City.

VII. Equal Employment Opportunity and Outreach

- A. Outside Counsel shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Outside Counsel shall take affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.
- B. If Outside Counsel will hire employees for any work under the agreement, or if counsel will subcontract any work under the agreement (with City approval), Outside Counsel shall make affirmative efforts to recruit minority and women candidates. Affirmative efforts may include the use of advertisements in publications directed to minority communities and other targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach.
- C. By executing an agreement with the City, Outside Counsel affirms that it complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42. Any violation of the requirements of the provisions in this Section 7 shall be a material breach of Agreement for which Outside Counsel may be subject to damages and sanctions provided for by the Agreement and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.

VIII. Nondiscrimination in Employee Benefits

- A. Compliance with SMC Ch. 20.45: Outside Counsel shall comply with the requirements of SMC Ch. 20.45 and Equal Benefit Program Rules

implementing such requirements, under which counsel is obligated to provide the same or equivalent benefits (“equal benefits”) to its employees with domestic partners as Outside Counsel provides to its employees with spouses. At the City’s request, Outside Counsel shall provide complete information and verification of compliance with SMC Ch. 20.45. *(For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-4529 or review information at <http://cityofseattle.net/contract/equalbenefits/>.)*

- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Section 8 shall be a material breach of contract for which the City may:
- (1) Require Outside Counsel to pay actual damages for each day that the counsel is in violation of SMC Ch. 20.45 during the term of the contract; or
 - (2) Terminate the contract; or
 - (3) Disqualify Outside Counsel from bidding on or being awarded a City contract for a period of up to five (5) years; or
 - (4) Impose such other remedies as provided for in SMC Ch. 20.45.

IX. Other Terms

- A. Use of Recycled Content Paper: Outside Counsel shall use, whenever practicable, recycled content paper on all documents submitted to the City.
- B. Americans with Disabilities Act: Outside Counsel shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this contract.
- C. Fair Contracting Practices Ordinance: Outside Counsel shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.