

CITY OF SPOKANE ETHICS COMMISSION
MEETING MINUTES – December 14, 2023, 2:00 pm

I. Call to Order/Roll Call.

Commissioner Co-Chair Sarah O'Hare called the December 14, 2023, meeting of the Ethics Commission to order at 2:00 p.m. Commissioner O'Hare stated for the record that she determined that she had a conflict relating to the hearing items due to her friendship with Zack Zappone and would recuse herself from those matters. Commissioner O'Hare then turned the meeting over to Commissioner Co-Chair Clayton McFarland.

Present for the meeting were Commission Members: Co-Chairs Sarah O'Hare and Clayton McFarland; Kenneth Hall, Gail Heck-Sweeney and Merle Iverson. Also present were Assistant City Attorney and Staff Director Michael J. Piccolo, Assistant City Attorney Elizabeth Schoedel and support staffs Doris Stragier and Ashley Haile.

II. Approval of Agenda. After a noted correction to the agenda of the next regularly scheduled meeting being December 20, 2023, the Agenda was approved unanimously by all Commissioners.

III.a. Approval of July 26, 2023 Minutes.

The Minutes from the meeting of July 26, 2023, have been reviewed. Motion to approve was made by Commissioner Iverson and seconded by Commissioner Hall. The minutes were approved unanimously.

III.b. Objection to Commissioner McFarland's participation in the Muller complaints filed by Zack Zappone, Mark Carlos and Jeff Gunn.

Commissioner Co-Chair McFarland read a written statement in response to the objections filed by Zack Zappone, Mark Carlos and Jeff Gunn, which was submitted for the record. He concluded that he does not have a conflict of interest to hear the complaints filed by Neil Muller against them.

III.c. Hearing of Ethics Complaint EC-23-03 against Mark Carlos by Neil Muller and Mark Carlos Motion to Dismiss.

The complainant Neil Muller and respondent Mark Carlos were both present, with Mr. Carlos appearing remotely.

The Commission first addressed Mr. Carlos' Motion to Dismiss. Commissioner Co-Chair McFarland asked for statements from Mr. Carlos with respect to his motion to dismiss. Mr. Carlos said he would rely on his material that was submitted. But, he did want to point out that he did take the day off to testify as a private citizen before the redistricting board which is permitted pursuant to City of Spokane Administrative Policy 0620-11-62.

Commissioner Co-Chair McFarland asked for statements from Mr. Muller. Mr. Muller noted that Mr. Carlos did mention during his testimony his role and expertise with working for the City government which blurs the lines. That is only one of the items raised in his complaint.

No further questions or discussion, Commissioner Heck-Sweeney made a motion to grant the motion to dismiss, seconded by Commissioner Iverson; two votes granted (Heck-

Sweeney and Iverson), two votes opposing (McFarland and Hall). Motion to dismiss was not granted.

The Commission proceeded to the hearing on the merits. Neil Muller and Mark Carlos were sworn in to tell the truth while testifying before the Ethics Commission.

Both Mr. Muller and Mr. Carlos made statements and presented their case. Neither party provided any witnesses. Questions by the Commission were asked and answered. Final arguments were provided.

Commissioner Hall made a motion to go into executive session for deliberations; seconded by Commissioner Iverson, all approved. 3:00 pm Commission moved into executive session. 3:20 pm Commission back on record.

Commissioner Heck-Sweeney made a motion that the commission conclude that based on the preponderance of the evidence standard, there is no ethics violation, but they do want to make note that it is important for employees of the City to understand and follow City administrative policy for the use of personal devices while conducting City business; Commissioner Hall seconded the motion, Motion passed 4-0.

III.d. Hearing of Ethics Complaint EC-23-04 against Jeff Gunn by Neil Muller.

The complainant Neil Muller and respondent Jeff Gunn were both present. Jeff Gunn was sworn in to tell the truth while testifying before the Ethics Commission.

Both Mr. Muller and Mr. Gunn made statements and presented their case. Neither party provided any witnesses. Questions by the Commission were asked and answered. Final arguments were provided.

Commissioner Hall made a motion to go into executive session for deliberations; seconded by Commissioner Iverson, all approved. 3:30 pm Commission moved into executive session. 3:45 pm Commission back on record.

Commissioner Heck-Sweeney made a motion that the commission conclude that there is no ethics violation, but noted this matter was a much harder decision for the Commission because of the potential appearance of conflict of interest. The Commission had concerns that there could be personal benefits. The Commission also wanted to make sure and felt it is very important that employees understand and follow City administrative policy with respect to the use of private devices while conducting City business; Commissioner Hall seconded the motion, Motion Passed 4-0.

Commissioner Hall motioned for a five minute break; seconded by Commissioner Iverson, all approved. Back on record at 3:53 pm.

III.e. Hearing of Ethics Complaint EC-23-05 against Betsy Wilkerson by Neil Muller and Betsy Wilkerson Motion to Dismiss.

The complainant Neil Muller was present. Betsy Wilkerson was present along with her attorney Jeffry Finer. The Commission proceeded to hear Ms. Wilkerson's Motion to Dismiss.

Commissioner Co-Chair McFarland asked for statements from Mr. Finer with respect to Betsy Wilkerson's motion to dismiss. Mr. Finer stated he just came on this case Tuesday so he cannot speak to the previously filed documents. He does want to state with respect to the motion to dismiss, there is no dispute that Ms. Wilkerson was using a private phone, in a private account, when she received a message from an individual who does not work for the City, in her spam account. There is no suggestion to even suggest that she saw the email. This was in her private account that has no connection to her work. The email was not solicited, read or acted upon. There are not facts before you.

Commissioner Co-Chair McFarland asked for statements from Mr. Muller. The ethics code provides an opportunity for inquiry. The main function here is council members as leaders of our community have a duty to set forth the highest bar and that includes responding to persons. She should have responded with her work email or phone to communicate.

Mr. Finer rebutted that the Commission is being asked to create a duty to have to respond to all private junk email and report it. This is without merit.

No further questions or discussion, Commissioner Hall made a motion to grant the motion to dismiss, seconded by Commissioner Heck-Sweeney; Motion Passed 4-0. Motion to dismiss was granted.

III.f. Hearing of Ethics Complaint EC-23-02 against Zack Zappone by Neil Muller and Zack Zappone Motion to Dismiss.

The complainant Neil Muller and respondent Zack Zappone were both present. The Commission proceeded to hear Mr. Zappone's Motion to Dismiss.

Commissioner Co-Chair McFarland asked for statements from Mr. Zappone with respect to his motion to dismiss. Mr. Zappone stated that while the accusations made against him may be something people don't like, they didn't equate to an ethics violation. Mr. Muller response to my motion to dismiss are not related to the ethics code. He raises question about my personal benefit and there being a conflict of interest. I think it would be hard to determine I have a conflict of interest because I am not a candidate for office and I am not sure I will be a candidate in the future. This duty was bestowed upon the City Council and requires the City Council to take action by the City Charter. If there is a change in the district map it affects every council member. I don't think there is a conflict there because I am not a candidate for office and I am not on the ballot. Furthermore, I abstained from voting through this process. Most of the allegations don't pertain to the Ethics Code.

Commissioner Co-Chair McFarland asked for statements from Mr. Muller. Mr. Muller noted that Mr. Zappone had not addressed using his personal devices and the communications where he used them. There is exhibit after exhibit showing that there is a conflict. There is so much in the complaint that is objectionable as a council member.

Zappone rebutted it's clear there is a lot he learned through this process, along with the City of Spokane. In the superior court there were subpoenaed documents and a lot of overlapping communication. There are gray lines talking official and campaigning.

After questioning and discussion, Commissioner Hall made a motion to go into deliberations; Commissioner Iverson seconded, all approved. 4:20 Commission went into executive session. 4:30 Commission is back on record.

Commissioner Hall made a motion to deny the motion to dismiss, seconded by Commissioner Iverson; three votes in favor (Hall, Iverson and Clayton), one vote opposing (Heck-Sweeney). Motion to dismiss failed.

The Commission proceeded to the hearing on the merits. Zack Zappone was sworn in to tell the truth while testifying before the Ethics Commission.

Both Mr. Muller and Mr. Zappone made statements and presented their case.

Neither party provided any witnesses. Mr. Muller wanted to submit additional emails from potential witnesses which was denied. Questions by the Commission were asked and answered. Final arguments were provided.

Commissioner Hall made a motion to go into executive session for deliberations; seconded by Commissioner Iverson, all approved. 5:30 pm Commission moved into executive session. 5:53 pm Commission back on record.

Commissioner Hall made a motion that the Ethics Commission find, based on the record, a violation of the Ethics Code, specifically SMC 01.04A.030 Prohibited Conduct, section g, personal interest in legislation prohibited; Commissioner Iverson seconded the motion.

Discussion:

Commissioner Hall thanked Mr. Muller and wanted him to know he recognized that this took a lot of effort. This wasn't done just to poke the bear or something like that. Out of all of this I think there was some learning done here by everyone who came into this room today. This wasn't easy for anyone.

Commissioner Clayton noted a specific code section that is referenced states that no city officer or employee may benefit directly or indirectly from any legislation within the city, and it goes on to mention compensation periods and enacting legislation by different charters and the appearance of fairness doctrine, but the last section says, City Council members shall not be prohibited from participating in the adoption of legislation when the council member has only a remote interest in the legislation which has been disclosed, the legislation is applicable to the general public and not unique to that council member. And, I think in this instance, the legislation to adopt the map was unique to a specific council member who drafted the map themselves.

Commissioner Heck-Sweeney said she would like to comment that she totally disagrees with them. She does think there was some good learning regarding personal communication. We all struggle with that. We're all City employees and also under the same code as volunteers. I do not see that there is personal gain here. I think it is very difficult to be in a position, whether you're a volunteer or an elected, it gets into a very gray area. And I think, as you said, if I'm not going to do it over again, if I wouldn't have drawn that map, but at the time you're in those meetings and people are pushing you to do things

and it happens. And I think at the time you did your best, and their decisions are theirs. I do not support them. But there are learnings for all of us as far as using personal communication. I personally, every time I write and email or text, no matter to who, ask is this going to be on the front page of the wall street journal. And if I'm not comfortable with that, I don't send it.

Commissioner Hall noted one more thing. Everyone brought us the use of personal versus city type stuff and that is something I think we cannot rule on. That does not fall under our jurisdiction, that's a city policy and not an ethic code.

Votes: 2 in favor; 2 opposed. Motion did not pass.

III. Calendar.

The next regularly scheduled meeting is December 20, 2023 with a time change from 4:00 pm to 2:00 pm.

IV. Other Business.

Sarah O'Hare noted that her term is over at the end of this year, however, would stay only to facilitate the conclusion of current business. She inquired again about the vacancies on the Commission and the status of that process. Mike Piccolo indicated he would see that Mayor Elect Brown would be informed of the vacancies.

Merle Iverson noted discrepancies in term dates on the Ethics Commission web page concerning commissioners term dates.

V. Adjournment.

The meeting was adjourned at approximately 6:00 p.m.

Approved on December 20, 2023.

Sarah O'Hare was absent from the
December 20, 2023 meeting.

Sarah O'Hare, Co-Chair



Clayton McFarland, Co-Chair