



September 20, 2019

SENT VIA EMAIL

Erick O. Agina
pdcc@pdcc.wa.gov
Compliance Officer
State of Washington
Public Disclosure Commission
P.O. Box 40908
Olympia, WA 98504-0908

Subject: PDC Case No. 55901 – City of Olympia Response to Complaint

Dear Mr. Agina:

The information and exhibits submitted with this letter are in response to a PDC Complaint (“Complaint”) by James (Jim) Lazar submitted on August 1, 2019. It is my understanding Mr. Lazar submitted his Complaint on his own behalf as a private citizen and not in connection with any candidate’s election campaign related to positions on the Olympia City Council. In his Complaint, Mr. Lazar alleges violations of RCW Chapter 42.17A by the City of Olympia, specifically RCW 42.17A.555 and RCW 42.17A.575.

Mr. Lazar states that, “The City is always in a budget cycle. For the 2020 budget, the City prepared a Public Service Announcement, in which the Mayor appears in a video, urging involvement.” Mr. Lazar further states “. . . because the City actually prepared this video, and is using the City website and City Facebook page to promote it, the City appears to be in violation of RCW 42.17A.555.” (See, Exhibit A, PDC Complaint of James Lazar.) After filing his PDC Complaint, Mr. Lazar sent an email to Steve Hall, Olympia City Manager, advising him that he had submitted a complaint to the PDC. (See, Exhibit B, Email from Jim Lazar to Steve Hall.)

Mr. Lazar’s email, advising Mr. Hall of his PDC Complaint, was forwarded to me on August 1, 2019, at 11:56 a.m., as Olympia’s City Attorney. (See, Exhibit B.) After investigating Mr. Lazar’s allegations and reviewing RCW 42.17A.555, RCW 42.17A.575 and PDC Interpretation No. 10-01, I directed City staff to take down and remove the Public Service Announcement (PSA) in which Mayor Cheryl Selby requested City residents to engage online in the City’s 2020 budget process. As a result, the PSA was removed from the City’s website and Facebook page before 5:00 p.m. on August 1, 2019, less than six hours after receiving notice of Mr. Lazar’s complaint. (See, Exhibit C, Declaration of Joshua Linn.)

The City of Olympia acknowledges its error and accepts responsibility for the inadvertent violation of RCW 42.17A.555 and RCW 42.17A.575. The law requires that an elected official cannot appear in a public service announcement in which they speak or appear during the period starting January 1 through the general election in November. The City of Olympia understands that an elected official may participate in a PSA, but that the

Erick O. Agina
Compliance Officer
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broadcast, showing, dissemination or distribution of the PSA cannot be used by the City until after the general election, in a year where the official will stand for re-election.

I would be remiss if I failed to point out that Mr. Lazar's complaint contains questionable requests that are--in themselves--violations of the Fair Campaign Practices Act (RCW Chapter 42.17A). For example, Mr. Lazar makes three requests to the PDC: (1) that "the offending photograph and video from [the City's] website and Facebook page immediately . . ." be removed; (2) that the City be fined "at least the amount that would be incurred by each of the opponents to the Mayor to directly mail each person who received this advertisement from the City via website or Facebook;" and (3) that "the City should be required to provide each other candidate equal access to the City Facebook page and website to provide 'equal time' to all candidates. When each candidate has reached the same number of 'impressions' as the Mayor has, that equal time should be deemed satisfied."

It is apparent from Mr. Lazar's requests that he is asking the PDC to (1) fine the City of Olympia an exorbitant amount of money for an inadvertent violation, although the City immediately and promptly took action to remedy its error by removing the offending PSA; and (2) order the City to use public resources and facilities to permit candidates for public office to appear on the City's website and Facebook page for campaign purposes. Incredulously, Mr. Lazar makes this request although Mayor Selby's PSA was not for campaign purposes, but to ask Olympia's citizens to join an online discussion of the City's 2020 budget priorities. The City of Olympia has learned from its error and will be vigilant in following the law in future PSAs.

As for Mr. Lazar's request that the City remove the PSA from the City's website and Facebook page, the City has voluntarily fulfilled that request. The City submits that the inadvertent violation at issue has been resolved and the City has taken steps internally to prevent future violation of RCW 42.17A.575.

After review of the information provided herein, together with the exhibits provided by the City of Olympia, the City respectfully requests the Commission find there was an inadvertent violation of the Fair Campaign Practices Act which the City voluntarily corrected, and there is no evidence to support or establish an intentional violation of any laws or PDC regulations. The City urges that no fine/penalty or other action be taken by the PDC against the City of Olympia.

Sincerely,



Mark Barber
City Attorney

Enclosures: Exhibits A through C
cc: Olympia City Council
Steven R. Hall, City Manager
Jay Burney, Assistant City Manager

EXHIBIT A

File a Formal Complaint - Jim Lazar

Jim Lazar reported via the portal

Jim Lazar reported (1 Aug 2019)

The City is always in a budget cycle. For the 2020 budget, the City prepared a Public Service Announcement, in which the Mayor appears in a video, urging involvement.

The Mayor's participation in this may violate RCW 42.17A.575. That is not the focus of this complaint.

However, because the City actually prepared this video, and is using the City website and City Facebook page to promote it, the City appears to be in violation of RCW 42.17A.555.

a) Is using city facilities in support of a campaign in violation of RCW 42.17A.; the person who caused this video to be posted on the city website, and linked to the city Facebook page, undoubtedly reports to the City Manager, which is why Steve Hall is personally named. The only City employees who do not report to the City Manager are the Municipal Court Judge and the Hearing Examiner, and neither of them likely have access to post material directly to the City website or Facebook page.

b) Has failed to assure, by contract, that the video that the City produced and owns, would not be used in violation of RCW 42.17A.575 as required by that statute.

RCW 42.17A.575 is unambiguous in its language: during the calendar year of her re-election campaign, the Mayor may not appear in a public service announcement that bears her photo. That is violated by the email the City mailed, and the portrayal that is on the City website, both of which contain her photo and a link to the video.

The email I received, which is attached, is clearly a public service announcement. It was directly emailed to a list of nearly 2,500 "subscribers" to City email announcements. In addition, the City Facebook page has over 10,000 "followers" each of whom has been encouraged to visit this video.

I believe that the City should be required to:

- a) remove the offending photograph and video from its website and Facebook page immediately.
- b) be fined at least the amount that would be incurred by each of the opponents to the Mayor to directly mail each person who received this advertisement from the City via website or Facebook, and
- c) The City should be required to provide each other candidate equal access to the City Facebook page and website to provide "equal time" to all candidates. When each candidate has reached the same number of "impressions" as the Mayor has, that equal time should be deemed satisfied.



Home » 2020 Budget: Your Priorities

2020 Budget: Your Priorities



Tell us your priorities for the 2020 budget

In 2018, the City began to use a new and unique process to develop the City's budget called PPI (Priorities, Performance and Investments).

REGISTER to get involved!

Who's listening

Jim Cooper
City Councilmember, Finance
Committee Chair



Jessica Bateman
City Councilmember, Finance
Committee



Lisa Parsley
City Councilmember, Finance
Committee



Timeline

Online Surveys Open
July 09 2019



Like Follow Share



City of Olympia - Government

July 10 at 8:00 AM

As we begin to develop the City budget for 2020, we need to hear from you. WHAT ARE YOUR TOP PRIORITIES?

We've created individual surveys for each of Olympia's five focus areas.

- Community, Safety & Health
- Downtown
- Economy
- Environment
- Neighborhoods

Complete them all, or only those that interest you at: <http://EngageOlympia.com>

Just a few minutes of your time will help us understand what elements of our community vision matter to you most.



City of Olympia - Government

@cityofolympia

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Like Follow Share



City of Olympia - Government

July 16 at 9:06 AM

THE BUDGET GAMES

How does the City decide how to spend 150 million dollars a year? It's not a big battle between departments anymore... well usually 😊.

I'll be sharing three (completely ridiculous) videos over the next few days to show you how it really works.

Spoiler alert: It all starts with your priorities.

In fact, we want to know about your priorities right now as we begin to develop the 2020 budget. We've built specific surveys for each of Olympia's five focus areas.

- Community, Safety & Health
- Downtown
- Economy
- Environment
- Neighborhoods

Take them all or only those that interest you at <https://engage.olympiawa.gov/2020-budget-ppi>

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City of Olympia - Government

July 18 at 8:30 AM

BUDGET DIFFERENT

That's right, in Olympia we do "budget different". In this last of three (completely ridiculous) videos, we finally talk about the unique budget process that determines how the City spends the money we receive. Spoiler alert: It all starts with your priorities.

In fact, we want to know about your priorities right now as we begin to develop the 2020 budget.

Take the surveys to help us understand what matters to you most at: <https://engage.olympiawa.gov/2020-budget-ppi>



15

10 Comments 1 Share

Like

Comment

Share

Subject: An Invitation from Mayor Cheryl Selby
From: City of Olympia <news@olympiawa.gov>
Date: 7/16/2019, 3:09 PM
To: <jlazar@jimlazar.com>



City News & Information



An invitation from the Mayor

I hope you're having a wonderful summer and are enjoying everything our beautiful City has to offer this time of year. Summertime is when those of us at the City start to think about the next year's City Budget.

An important part of creating our budget each year is hearing from citizens like you, so here's an opportunity to share what's most important to you as we kick off this process.

We have a big and inspiring community vision. There are lots of ideas for how to achieve that vision, and our budget process is one of the most important ways in which we determine how to invest in what matters most to you. In addition to providing all those things that are critical to making our City function safely – like clean drinking water, safe roads, and a top-notch sewer system – our budget determines how we invest in the other things that make our city such a wonderful place to live, work, and play.

In Olympia, it's important that citizens have the chance to weigh in on our priorities so that we make the best and wisest decisions together, as a community. I want you to be a part of this conversation and we've made it really simple.

Just visit our **Engage Olympia** page titled [2020 Budget: Your Priorities](#) and take the surveys that matter to you to tell us which priorities you think are the highest for next year's budget.

We look forward to hearing what you have to say!

Sincerely,

Mayor Cheryl Selby



Go to Engage Olympia



[View this email in your browser](#)

Copyright © 2019 City of Olympia, All rights reserved.
You are receiving this email because you opted in via our website.

Our mailing address is:

City of Olympia
601 4th Ave E
Olympia, WA 98501-1112

[Add us to your address book](#)

Want to change how you receive these emails?
You can [update your preferences](#) or [unsubscribe from this list](#).

Complaint Description

Jim Lazar replied Thurs, August 1, 2019 at 11:39AM
to: "PDC Support" pdc@pdc.wa.gov

I submitted a complaint against the City of Olympia a few minutes ago. This is a reply to the email that said I could "update" my complaint.

I could not "attach" the video that I reference in the complaint. Nor could I embed a link to it.

However, I believe the link below will take the PDC staff to a recording I made of the video. It may also still be accessible on the City website.

What impact does the alleged violation(s) have on the public?

The public, primarily Olympia citizens, are exposed to a public service announcement broadcast on the City's website showing the mayor urging involvement in a city process. This is free advertising for the Mayor's re-election campaign, and not made equally available to other candidates for this position.

List of attached evidence or contact information where evidence may be found

Copy of email received by Jim Lazar from the City.

Copy of City web page showing the Mayor's picture, and a link to a youtube video of the Mayor making a speech.

Copy of City Facebook pages, directing viewers to the video of the Mayor.

I have a recording of the offending video, but do not know how to save that to a file small enough to attach. I can provide (I think) a link to it on request from the PDC, and can definitely bring my phone to the PDC office to show the video.

I have a complete copy of the email list that the City used to distribute this Public Service Announcement / Advertisement, but am contractually limited from sharing it under the terms by which the City released it to me under the Public Records Act. I think that means I should not attach it, because all attachments become public records at the PDC. But it can be obtained from the City by requesting the Public Records supplied to me on July 31.

List of potential witnesses with contact information to reach them

Cheryl Selby, Mayor of Olympia

Steve Hall, City Manager of Olympia

Karen Messmer, Citizen who has viewed the video online, and observed the Facebook pages.
360-357-8364

I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.

EXHIBIT B

From: [Steve Hall](#)
To: [Mark Barber](#); [Kellie Braseth](#)
Subject: Attorney Client Privilege: PDC Complaint
Date: Thursday, August 01, 2019 11:55:36 AM

From: Jim Lazar <jim@jimlazar.com>
Sent: Thursday, August 01, 2019 11:48 AM
To: Steve Hall <shall@ci.olympia.wa.us>
Subject: PDC Complaint

External Email Alert!

This email originated from a source outside of the City's network. Use caution before clicking on links or opening attachments.

Just a note to let you know I have submitted a complaint to the PDC alleging that you (as City Manager; someone on your staff actually caused this to be done) and the City are violating RCW 42.17A.555 and RCW 42.17A.575 for running a video of the Mayor as a public service announcement on the City Website and Facebook page. I believe that is unlawful, both with respect to showing an elected official in a PSA during the year in which they are up for election, and with respect to using City facilities to broadcast that advertisement.

Unfortunately, the new PDC software does not give me a copy of the complaint until it is processed onto the PDC website. That may be a day or three.

--
Jim Lazar
1907 Lakehurst Dr. SE
Olympia, WA 98501
360-786-1822

"We're headed toward a two-tiered society – a society that's destroying opportunities for the disadvantaged and creating welfare for the rich."
"Misguided policies are creating a permanent underclass, crippling our economy and corrupting the business community."

Charles Koch (yes, one of the two Koch brothers)

1
2
3 EXHIBIT C
4

5 PUBLIC DISCLOSURE COMMISSION
6 STATE OF WASHINGTON
7

8 In RE:

9 Public Disclosure Commission Case No. 55901 DECLARATION OF JOSHUA LINN
10

11
12 I, Joshua Linn, declare and state as follows:

13 1. I am over the age of 18 years and a resident of Thurston County, State of Washington.

14 I am competent to testify herein and have personal knowledge of the matters set forth below.

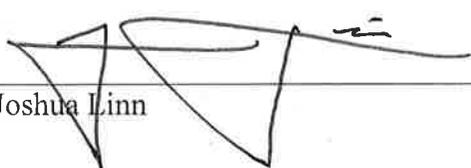
15 2. I am employed as a Program Specialist in the General Government Department of the
16 City of Olympia.

17 3. My duties include maintaining the City's websites and Facebook page.

18 4. On August 1, 2019, before 5:00 p.m., I took down and removed from the City's
19 websites and Facebook page the Public Service Announcement (PSA) in which Mayor Cheryl
20 Selby requested Olympia residents to engage online in the City's 2020 budget process.
21

22 I DECLARE UNDER PENALTY OF PERJURY PURSUANT TO THE LAWS OF THE
23 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE
24 BEST OF MY KNOWLEDGE.

25 DATED this 20 day of September, 2019, at Olympia, Washington.

26
27
28

Joshua Linn