SEATTLE CITY COUNCIL | POSITION 9
COUNCIL PRESIDENT M. LORENA GONZÁLEZ

DATE: May 7, 2020

TO: Councilmember Lisa Herbold, Councilmember Tammy Morales, Councilmember Kshama Sawant, Councilmember Alex Pedersen, Councilmember Debora Juarez, Councilmember Dan Straus, Councilmember Andrew Lewis, Councilmember Teresa Mosqueda

FROM: Council President M. Lorena González

SUBJECT: Seattle City Council Work Program and OPMA / Proclamation 20-28 Compliance

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I. Introduction.

During the past couple of weeks, I have received communication from some of you about concerns related to the City Council's ongoing compliance with the Open Public Meetings Act ("OPMA") in light of Governor Jay Inslee's Proclamation 20-28.[1] Indeed on April 28, 2020, I received a formal communication from Councilmember Lisa Herbold related to her concerns regarding the Council's potential non-compliance with Proclamation 20-28. That correspondence, which each of you also received, included a copy of legal advice from our City Attorney's Office related to Proclamation 20-28 and the Proposed Payroll Tax and Expense Package (Council Bills 119772, 119773 and 119774) currently being considered in the Select Committee on Budget, which is chaired by Councilmember Teresa Mosqueda. I want to thank Councilmember Herbold for her ongoing conversations with me about her concerns and for clearly communicating those concerns to the entire Council.

The purpose of this memo is as follows: (1) to promote the consistent application of Proclamation 20-28, for so long as it is in effect and (2) to provide direction to Councilmembers on all committee hearings scheduled to occur during May 2020.

II. Promoting Consistent Application of Proclamation 20-28.

As a reminder, Proclamation 20-28 temporarily suspends the OPMA requirements for public agencies in Washington State. During the evening of May 4, 2020, the majority and minority leadership of the Washington State Legislature extended the applicability of Proclamation 20-28 until May 31, 2020. In doing so, it relieves the Seattle City Council from our legal obligation to open up Council Chambers to allow members of the public to enter into Chambers for in-person viewing of our public meetings. This is important relief because it permits us to protect City of Seattle employees, who are essential to staffing public meetings in Chambers, from being exposed to the novel coronavirus while Councilmembers meet remotely.

[1] In referring to Proclamation 20-28, I am also referring to any and all subsequent proclamations that extended the provisions of Proclamation 20-28, including Proclamation 20-28.1, which provided an extension of the original proclamation through May 4, 2020, and the subsequent extension through May 31, 2020.

Importantly, this relief is granted to local agencies in the context of a proclamation that severely restricts the scope of our work to those legislative items that (1) are necessary and routine or (2) are needed to deal with COVID-19 and the current public health crisis. The Attorney General's Office ("AGO") provided further guidance on these two categories of appropriate action by stating as follows (emphasis added):

> *"As a result, we suggest that an agency will want to keep in mind the OPMA's open government cornerstones. These cornerstones would support reasons to temporarily limit a governing body's usual business during this outbreak and for it to focus instead on only those matters necessary and routine, or those needed to deal with the outbreak,* ***until the public can again fully attend all OPMA meetings, including in person if they choose****."*

After Governor Inslee issued Proclamation 20-28 on March 24, 2020, and the AGO released its guidance on March 26, 2020, my office engaged the City Attorney's Office ("CAO") to provide us with legal advice and further guidance that would facilitate my office's evaluation of what should or should not be placed on the Introduction & Referral Calendar and, if committee meetings proceeded, what limitations would apply to agendas for those meetings as well as Council Briefing and City Council agendas. The CAO, via Assistant City Attorney Teresa Chen, shared that guidance with each of you on April 15, 2020.

I want to reiterate that it is my intent to strictly comply with Proclamation 20-28 and this legal guidance, so long as it is in effect. In doing so, we have enhanced our legislative review process by requiring that the CAO, after consultation with Council Central Staff, provide my office with its legal opinion as to whether any legislation does or does not comport with Proclamation 20-28 prior to both introduction and final action of all legislation. This same analysis must also be applied to any matters that a Councilmember proposes for a briefing and discussion in a public meeting. As provided by the CAO, an "action" under the OPMA is broadly defined to include even those subjects that are being discussed but not voted upon.

This enhanced review process, the Proclamation, and the AGO and CAO guidance were not available to my office when this City Council voted to refer Council Bills 119772, 119773 and 119774 to the Select Committee on Budget on April 6, 2020. Nor was this information yet available to Chair Mosqueda and me when we agreed upon a schedule for hearing those bills in the Select Committee on Budget, beginning on April 14, 2020. As a result, the primary sponsors of those bills and the City Council believed at the time that it was appropriate to refer that revenue package to the Select Committee on Budget.

III. Immediate Impact of Proclamation 20-28 on All City Council Public Meetings.

As mentioned above, on the evening of May 4, the majority and minority leadership of the Washington State Legislature extended Proclamation 20-28 until May 31, 2020. To ensure that the City Council has notice of how this impacts our operations, I am providing you with the following guidelines as it relates to our legislative work that would ordinarily occur in committees and/or by direct referral to the City Council. This direction will have an immediate impact on the ongoing consideration of the Sawant/Morales Proposed Payroll Tax and Expense Package, as introduced.

With the extension of Proclamation 20-28, it is incumbent upon all of us to continue complying with its provisions by limiting our legislative actions to items that are routine and necessary or needed to deal with COVID-19 and the current public health crisis. I appreciate Councilmember Herbold flagging her concerns and proposed alternatives related to the current consideration of the proposed *Sawant-Morales Bills* and compliance with Proclamation 20-28.

Like many of you, I have been in dialogue with the City Attorney's Office regarding the Council's consideration of Council Bills 119772, 119773 and 119774, related to a corporate payroll tax and spending plan.

As I have learned more about this legislative proposal and had additional communications with the CAO, I have become increasingly concerned that the substance of this proposal and the facts established in its legislative findings do not meet the high standard necessary to support a conclusion that the package *as a whole* is either routine and necessary or sufficiently related to COVID-19 and the current public health crisis, as required by Proclamation 20-28. Firstly, there appears to be wide agreement that this legislative package is not routine or necessary. Secondly, it appears that the prime sponsors may believe that this legislative package is related to COVID-19 and the current public health crises. However, the taxation and spending plan legislation contains several components that likely would not be justified as COVID-19-related legislation pertaining to the current public health emergency. For example, the Green New Deal housing strategies (section 2.D); Job training investments for transitioning workers (section 4); creation of the Social Housing Board (section 3.14.750); and creation of the Green New Deal Housing Board (section 3.14.979) all bear little to no relationship to the current emergency. Moreover, the corporate payroll tax legislation is not proposed to be collected in 2020 and is intended to exist in perpetuity and, thus, long-after the current public health crises presumably ends. On these points, I would strongly urge each of you to carefully read the CAO memorandum dated April 28, 2020, that Councilmember Herbold shared with us.

I believe that any further Council action, which includes briefings and discussions at any regular, special or select committees, related to this legislative package as introduced puts the Council at significant risk of litigation related to a potential violation of the OPMA as a result of Governor Inslee's Proclamation 20-28. Councilmember Herbold proposed at least two potential alternatives for my consideration. Alternative 1 would require that the *Sawant-Morales Bills* be modified so that they are narrowly tailored to satisfy the restrictions imposed upon us by Proclamation 20-28. However, I am not a sponsor of the original bills and I cannot mandate that Councilmembers Morales and Sawant, who are independently elected officials, modify previously introduced legislation in the manner proposed by Councilmember Herbold. Nonetheless, if Councilmembers Morales and Sawant want continued public meetings on their bills while Proclamation 20-28 is in effect, they could chose to reintroduce legislation that is narrowed to comply with the restrictions of Proclamation 20-28. That is a choice only they can make.

As such, I believe Alternative 2 is the best available path and have asked Chair Mosqueda to strongly consider cancelling the Select Budget Committee meeting scheduled for Wednesday, May 13, 2020, and to refrain from convening public meetings on these proposed tax bills through at least May 31, 2020.

I understand how important these bills are to the prime sponsors, our shared constituencies and to our collective effort to identify new revenue sources that will prepare us for the ongoing response to this public health crisis and, ultimately, recovery from this once in a lifetime economic crisis. However, as public officials, we are required to comply with the OPMA. Allowing discussion of these bills to continue without regard to the requirements of Proclamation 20-28 would require us to recklessly and knowingly abandon our commitment to open government and a fair and equitable democratic process for both proponents and opponents of the *Sawant-Morales Bills* and any other alternative revenue proposals.

It is my firm belief, that the Council should take no further action on Council Bills 119772, 119773 and 119774 until the expiration of Proclamation 20-28 and ongoing easing of the Governor's "Stay Home, Stay Healthy" Order, or until we can allow for some level of in-person viewing of our public meetings, consistent with regular OPMA requirements, public health recommendations and the Governor's related emergency orders regarding public gatherings. If this Council continues to convene public meetings to discuss these specific tax bills or any equally-broadly framed alternative revenue proposals, each Councilmember will be unnecessarily exposed to the legal risks associated with allegedly violating the OPMA. I strongly urge each Councilmember to independently consult with the City Attorney's Office about your continued participation in any public meetings related to these revenue bills that may be scheduled through May 31, 2020.

Additionally, I strongly urge all committee chairs to follow these protocols and cancel all committee meetings that are not in alignment with Proclamation 20-28 through May 31, 2020. As the Council President, I will make exceptions on a case-by-case basis to this general rule and will do so with the counsel of the CAO on all matters that Councilmembers propose be discussed or otherwise acted upon during a public meeting.

IV. Preparing For The Eventual Expiration of Proclamation 20-28.

I am grateful that the majority and minority leadership of the Washington State Legislature extended the provisions of Proclamation 20-28 through May 31, 2020. However, as Council President, I am preparing for a scenario in which this proclamation is not extended and believe that it is critical for each of you to understand the impact to the operations of our public meetings if the proclamation is neither revised nor extended beyond May 31, 2020.

Without a revision or extension of Proclamation 20-28, there is a possibility that the City Council would be required to open the Council Chamber for all Council meetings to allow for some level of in-person viewing of our public meetings, consistent with regular OPMA requirements. This scenario would jeopardize the health and safety of both members of the public and employees of the City of Seattle who are essential to staffing public meetings in the Chamber, which is not currently equipped with appropriate safeguards that allow for physical distancing that could help to prevent the spread of the novel coronavirus. As Council President

and head of the Legislative Department, I am not willing to put members of the public and City employees at risk of infection to novel coronavirus and, thereby, put them in harm's way during this public health crisis.

For weeks I have been instructing the CAO and, more recently, the Office of Intergovernmental Relations, to lobby the Governor's Office, the AGO and the state legislature regarding the need to revise and extend Proclamation 20-28, in a manner that would make the operations of our local government OPMA compliant and predictable and safe for the general public and our essential workers. This need becomes even more important as the provisions of the Governor's "Stay Home, Stay Healthy" Order are softened.

In light of the likelihood of the need to continue the practice of physical distancing to prevent the spread of the novel coronavirus for many months to come, and perhaps even years, I am working with our Office of City Clerk in partnership with the Department of Finance and Administrative Services to consider implementing appropriate policies and partitions for the Chambers that would allow for public meetings to be conducted in a safe and secure manner. We do not yet know if this will be feasible or provide sufficient security against the threat of COVID-19. Concern for public health and the wellbeing of City employees will continue to guide these efforts and decisions, and I will incorporate the feedback of public health officials, the City Attorney's Office, and my Council Colleagues before deciding if and how to proceed with any of these potential options and scenarios. As usual, I appreciate your patience and your ongoing engagement on this issue.

Lastly, colleagues, for those of you who may have staff with underlying health conditions or other concerns or needs related to potentially returning to work, I strongly urge you and/or your staff to take this time to consult with our Legislative Department's HR Director Karen Jackson.

V. Conclusion.

I want to thank each of you for your ongoing attention towards the needs of our city employees and our friends, neighbors and constituents during these uncertain times.

Very truly yours,

Council President M. Lorena González
Seattle City Council, Position 9 // Citywide
Chair: Governance & Education Committee
Vice Chair: Public Safety & Human Services Committee