

FILED

18 JUN 14 AM 9:00

KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 18-2-14942-8 SEA

1
2
3
4
5
6
7 SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR KING COUNTY

9 JAMES EGAN, individually,

10 Plaintiff,

11 v.

12 CITY OF SEATTLE, a Washington municipal
13 corporation,

14 Defendant

NO.

**COMPLAINT FOR DAMAGES: OPEN
PUBLIC MEETINGS ACT
VIOLATIONS**

15 *The legislature finds and declares that all public commissions, boards,*
16 *councils, committees, subcommittees, departments, divisions, offices, and all*
17 *other public agencies of this state and subdivisions thereof exist to aid in the*
18 *conduct of the people's business. It is the intent of this chapter that their*
actions be taken openly and that their deliberations be conducted openly.

19 *The people of this state do not yield their sovereignty to the agencies*
20 *which serve them. The people, in delegating authority, do not give their*
21 *public servants the right to decide what is good for the people to know and*
what is not good for them to know. The people insist on remaining informed
so that they may retain control over the instruments they have created.

22 *Open Public Meetings Act Legislative Declaration, RCW 42.30.010*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. PARTIES

1. Plaintiff James Egan is a resident of the City of Seattle and a recognized attorney within the State of Washington. Through this lawsuit, Mr. Egan is not challenging the ultimate vote, and repeal, of the head tax ordinance because the ultimate vote was taken in a public forum. The interested parties and advocates hereto, including the undersigned attorneys, stand in strong belief that the head tax should never have been enacted. This lawsuit challenges compliance with the law with the intent of ensuring lawful public debate in the future.

2. Defendant City of Seattle is a municipal corporation within the State of Washington and the employer of the offending Mayor, Jenny Durkan, and the offending City Councilmembers at issue, Bruce Harrell, Sally Bagshaw, Lorena Gonzalez, Lisa Herbold, Rob Johnson, Deborah Juarez, Teresa Mosqueda, and Mike O'Brien. Councilmember Kshama Sawant's actions are not currently at issue in this case, as she was apparently left out of the communications that are the subject of these violations.

II. STATEMENT OF FACTS

3. The background facts giving rise to this lawsuit are well known to the citizens of Seattle. Without sensible consideration, on May 14, 2018, the City Council unanimously passed an ordinance commonly known as the "head tax" imposing a \$275 annual fee per employee upon the region's most prosperous for profit corporations. These elected officials argued that these corporations are so rich that it was appropriate to single them out and increase their tax burden to increase revenues for dealing with the homelessness crisis. At the same time, there was no agreement and/or plan on how to utilize the newly generated revenue. Mayor Durkan willingly signed the ordinance into law. Councilmember Gonzalez publicly

1 characterized Mayor Durkan as an Amazon pawn during the preceding deliberations that
2 lowered the original proposal from \$500 to \$275 per head.

3 4. According to the Seattle Times, in email, Councilwoman M. Lorena González
4 said she spoke Sunday night with Councilwoman Lisa Herbold about the potential of a head-
5 tax repeal based on reports on the public polling. She also said she spoke Sunday evening
6 with Deputy Mayor Shefali Ranganathan, who asked her to sign the joint statement, which
7 González' staff reviewed Monday morning. She said she only became "aware of the
8 possibility of a Special Meeting" during a "properly noticed" executive session at the
9 council's briefing on Monday. "I am unaware of any facts related to other councilmembers'
10 alleged discussions with each other or the Mayor on this meeting notice issue," González said
11 in her email.
12

13 5. According to the Seattle Times, Councilmember Rob Johnson said in a phone
14 call late Tuesday afternoon that he learned from Harrell early Monday — a day before the
15 vote — that a council majority seemingly supported a repeal. Johnson said he'd been out of
16 town from Thursday through Sunday, first learning of the special meeting Monday during his
17 brief talk with Harrell. "The Council President walked into my office and said, 'While you've
18 been away, these are the discussions we've been having. We're going to put this on the
19 agenda for Tuesday and consider a repeal, and it looks like we have the votes to do it,'"
20 Johnson recounted. "That was the first I'd heard about it, so I wasn't involved in any prior
21 conversations." Later Monday morning, Johnson said Harrell and Durkan asked him to be
22 part of the joint statement, providing him with some draft language, which Johnson said he
23 approved.
24
25
26

1 6. According to the Seattle Times, Councilmember Sally Bagshaw, one of the
2 mayor's seven, also seemed to suggest the latter scenario occurred. "I was at the beach
3 minding my own business and I got a call from the mayor's office letting me know that she
4 already had heard from a number of my council colleagues that this was going to be on the
5 agenda," Bagshaw said in an interview Monday. Councilmember Bagshaw is believed to
6 have previously violated the Open Public Records Act during an attempt to curtail a possible
7 impeachment of former Mayor Ed Murray, informing the Mayor's advisor, "*I think we will
8 get 5 votes...I think you will like it.*" All of these violations are the subject of this complaint.
9

10 7. Without any open debate, and with the pressure of a repeal referendum
11 growing, on June 11, 2018 at 12:09 p.m., the City Council, by and through Councilmember
12 Harrell, announced an intention to conduct a repeal vote on June 12, 2018. The notice was
13 late and violated the open public meetings act requirements. Prior to the announcement, it
14 was expressed and understood that Mayor Jenny Durkan, along with the City
15 Councilmembers at issue, Bruce Harrell, Sally Bagshaw, Lorena Gonzalez, Lisa Herbold, Rob
16 Johnson, Deborah Juarez, and Mike O'Brien, had reached an agreement, via unlawful
17 clandestine discussions, to repeal the original ordinance enacting the head tax. Later that day,
18 the Seattle Times published an article, referencing multiple experts on the topic, highlighting
19 the assorted violations.
20

21 **III. CAUSE OF ACTION: OPEN PUBLIC MEETINGS ACT VIOLATIONS**
22

23 8. As described herein, Mayor Jenny Durkan, along with the City
24 Councilmembers at issue, Bruce Harrell, Sally Bagshaw, Lorena Gonzalez, Lisa Herbold, Rob
25 Johnson, Deborah Juarez, and Mike O'Brien repeatedly violated the Open Public Meetings
26 Act codified under RCW Chapter 42.30. The spirit, letter, and purpose of the Open Public

1 Meetings Act is to prevent precisely the type of hidden debate as occurred during these
2 impulsive political proceedings: “(1) No governing body of a public agency shall adopt any
3 ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the
4 public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of
5 which notice has been given according to the provisions of this chapter. Any action taken at
6 meetings failing to comply with the provisions of this subsection shall be null and void... (2)
7 No governing body of a public agency at any meeting required to be open to the public shall
8 vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and
9 shall be considered an ‘action’ under this chapter.” RCW 42.30.060.

11 **IV. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff requests a judgment against Defendants in the form of all
13 relief permitted under RCW 42.30.120 described as: “(1) Each member of the governing body
14 who attends a meeting of such governing body where action is taken in violation of any
15 provision of this chapter applicable to him or her, with knowledge of the fact that the meeting
16 is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the
17 amount of five hundred dollars for the first violation. (2) Each member of the governing body
18 who attends a meeting of a governing body where action is taken in violation of any provision
19 of this chapter applicable to him or her, with knowledge of the fact that the meeting is in
20 violation thereof, and who was previously assessed a penalty under subsection (1) of this
21 section in a final court judgment, shall be subject to personal liability in the form of a civil
22 penalty in the amount of one thousand dollars for any subsequent violation. (3) The civil
23 penalty shall be assessed by a judge of the superior court and an action to enforce this penalty
24 may be brought by any person. A violation of this chapter does not constitute a crime and

1 assessment of the civil penalty by a judge shall not give rise to any disability or legal
2 disadvantage based on conviction of a criminal offense. (4) Any person who prevails against
3 a public agency in any action in the courts for a violation of this chapter shall be awarded all
4 costs, including reasonable attorneys' fees, incurred in connection with such legal action.
5 Pursuant to RCW 4.84.185, any public agency which prevails in any action in the courts for a
6 violation of this chapter may be awarded reasonable expenses and attorney fees upon final
7 judgment and written findings by the trial judge that the action was frivolous and advanced
8 without reasonable cause.” To be clear, this lawsuit does not challenge the legitimacy of the
9 ultimate vote, only the clandestine tallying and debate.
10

11
12 DATED this 13th day of June, 2018.

13 CONNELLY LAW OFFICES, PLLC

14 *Lincoln Beauregard*

15 By

16 Lincoln C. Beauregard, WSBA No. 32878

17 Julie A. Kays, WSBA No. 30385

18 Attorneys for Plaintiffs
19
20
21
22
23
24
25
26