

JUDGE JIM ROGERS

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

NO. 20-2-13314-1SEA

IN RE THE MATTER OF RECALL  
CHARGES AGAINST CITY OF  
SEATTLE COUNCIL MEMBER  
KSHAMA SAWANT

ORDER ON THE SUFFICIENCY OF  
CHARGES BROUGHT BY PETITIONER

This is the decision on the sufficiency of the recall petition charges filed against Councilmember Kshama Sawant by Mr. Ernest Lou. The Councilmember is a duly elected member of the Seattle City Council. The filed petition contains six charges. The Court has reviewed the pleadings filed by the parties and heard argument.

The Petitioner now has conceded that charges (4)(D) and (6)(F)<sup>1</sup> are legally insufficient. After review, this Court agrees. These charges, that Councilmember Sawant used her official position to encourage attendees to occupy the East Precinct of the Seattle Police

<sup>1</sup> Confusingly, the charges/allegations are sometimes noted as 1,2,3 and sometimes as A,B,C so this decision used both.

1 Department, and helped create the Capitol Hill Occupation Protest, are hereby found  
2 insufficient and are Dismissed.

3 For reasons set forth below, the remaining charges meet the standard for certification.

4 The Law on Recall

5 The right to file a recall petition is found in our State Constitution, Article I, Section  
6 33-34 and in the Revised Code of Washington 29A.56.110:  
7

8 Whenever any legal voter of the state or of any political subdivision thereof, either  
9 individually or on behalf of an organization, desires to demand the recall and discharge  
10 of any elective public officer of the state or of such political subdivision, as the case  
11 may be, under the provisions of sections 33 and 34 of Article 1 of the Constitution, the  
12 voter shall prepare a typewritten charge, reciting that such officer, naming him or her  
13 and giving the title of the office, has committed an act or acts of malfeasance, or an act  
14 or acts of misfeasance while in office, or has violated the oath of office, or has been  
15 guilty of any two or more of the acts specified in the Constitution as grounds for recall.  
16 The charge shall state the act or acts complained of in concise language, give a detailed  
17 description including the approximate date, location, and nature of each act complained  
18 of, be signed by the person or persons making the charge, give their respective post  
19 office addresses, and be verified under oath that the person or persons believe the  
20 charge or charges to be true and have knowledge of the alleged facts upon which the  
21 stated grounds for recall are based.

22 The Elections Office and Prosecutor's Office has followed the procedure for recall by  
23 preparing a ballot synopsis, serving the parties, and verifying that the petitioner is a voter in  
24 Seattle. See the Elsheikh Declaration.

25 This Court's role is very limited and acts only as a gatekeeper, reviewing the  
allegations only for legal and factual sufficiency, and not for their truth.

The court may hear arguments as to the sufficiency of the charges and the adequacy of  
the ballot synopsis. The court shall not consider the truth of the charges, but only their  
sufficiency. The court may hear arguments as to the sufficiency of the charges and the  
adequacy of the ballot synopsis. ***The court shall not consider the truth of the charges,  
but only their sufficiency.***

RCW 29A.56.140

1 What is the standard for sufficiency? The case of In re the Recall of Inslee sets out legal  
2 standards on this issue:

3 A charge is factually sufficient if the facts “establish a prima facie case of misfeasance,  
4 malfeasance, or violation of the oath of office” and are “*stated in concise language and*  
5 *provide a detailed description*” in order to “enable the electorate and a challenged  
6 official to make informed decisions.” *In re Recall of Wasson*, 149 Wash.2d 787, 791, 72  
7 P.3d 170 (2003) (citing *Cole v. Webster*, 103 Wash.2d 280, 285, 692 P.2d 799 (1984);  
8 *Chandler*, 103 Wash.2d at 274, 693 P.2d 71). The petitioner must have some  
9 knowledge of the facts underlying the charges. *In re Recall of Ackerson*, 143 Wash.2d  
10 366, 372, 20 P.3d 930 (2001). *Where the charge alleges the official violated the law,*  
11 *the facts must show the official intended to do so.* *In re Recall of Wade*, 115 Wash.2d  
12 544, 549, 799 P.2d 1179 (1990).

13 A charge is legally sufficient if it defines “substantial conduct clearly amounting to  
14 misfeasance, malfeasance or a violation of the oath of office” and there is no legal  
15 justification for the challenged conduct. *Wasson*, 149 Wash.2d at 791-92, 72 P.3d 170.  
16 RCW 29A.56.110 defines malfeasance and misfeasance:

- 17 (1) “Misfeasance” or “malfeasance” in office means any wrongful conduct that affects,  
18 interrupts, or interferes with the performance of official duty;  
19 (a) Additionally, “misfeasance” in office means the performance of a duty in an  
20 improper manner; and  
21 (b) Additionally, “malfeasance” in office means the commission of an unlawful act.

22 194 Wn.2d at 567-8.

23 This Court may draw reasonable inferences from facts. Our Courts examine the basis  
24 of submitted information, to ensure reliability. In West, 155 Wn.2d 666 and fn. 3, for  
25 example, newspaper reports that published internet chats were sufficient, but in In re Recall of  
Beasley, 128 Wn.2d 419, newspaper sources citing unnamed sources were not sufficient. West  
at 666; Beasley at 428.

An alleged factual insufficiency in a recall petition may be, in the judge’s sound  
discretion, cured by the consideration of supplemental documentation, so long as the elected  
official has sufficient actual notice to meaningfully respond to the factual record. In re Recall

1 of West, 155 Wn.2d, 155 Wn.2d at 666. A recall petitioner must have actual knowledge of  
2 facts indicating that an official intended to commit an unlawful act. THE WASHINGTON  
3 STATE CONSTITUTION, A Reference Guide, Utter and Spitzer, 2002, p.46.

4 The parties both submitted extensive additional factual materials attached to the  
5 Declaration of Ernest H. Lou (petitioner) and Dimitri Iglitzin (counsel for the Councilmember).  
6 Councilmember Kshama Sawant also submitted a Declaration. This Court considered all of  
7 these materials.

8  
9 **The First Charge (1) or (A)**

10 The Petitioner's first charge is that the Councilmember "Relinquish[ed] Authority of  
11 her Office and Disregard[ed] City of Seattle Employment and Hiring Rules (December 2017)."  
12 The charge states that the "...media has uncovered documents suggesting that she  
13 [Councilmember Sawant] may have effectively delegated decision regarding the hiring and  
14 termination of City of Seattle employees to an outside political organization. According to  
15 documents, the National Executive Committee and Seattle Executive Committee of the  
16 Socialist Alternative had authority over staffing decisions for her City of Seattle Council  
17 Office." Statement of Charges, 2/7. <sup>2</sup>

18  
19 **Are these allegations factually sufficient?**

20 The allegations provide a detailed description, in certain respects, in order to enable the  
21 electorate and a challenged official to make informed decisions. The charge alleges that the  
22 Councilmember delegated City business, the firing of an employee, to a named outside body,  
23

24  
25 <sup>2</sup> In addition to the charges, Mr. Lou attached Exhibits G-L which are proffered as documents from the Seattle Executive Committee of the Socialist Alternative Party, as well as related documents, from a local web site that reports on the Seattle City Council, "SCC Insight." Mr. Iglitzin attached Exhibit F, a decision letter by the Director of the Seattle Ethics and Elections Commission, dismissing certain complaints, including one related to this very allegation. All of these materials were considered.

1 Socialist Alternative Party, Seattle Executive Committee ( will be referred to as “SEC” in this  
2 Order), that it occurred in December 2017. Under SMC 4.16.020.A, the City Officers must  
3 have independence in performance of their duties and work within the structures of the City  
4 government. (“The City finds that the proper operation of democratic representative  
5 government requires that public officers and employees be independent, impartial, and  
6 responsible to the people; that government decisions and policy be made in the proper  
7 channels of the governmental structure”).<sup>3</sup> There is no named employee and the exact  
8 circumstances of the employment firing is not given.  
9

10           However, both sides appear to know exactly what is at issue, and both sides submit  
11 factual materials right on point (this is true for all of the charges, in fact). Assuming that the  
12 facts surrounding the alleged decision by the SEC are deficient, this Court may cure an alleged  
13 factual insufficiency by the consideration of supplemental documentation. In re Recall of  
14 West, 155 Wn.2d, 155 Wn.2d at 666. The Councilmember had sufficient actual notice to  
15 meaningfully respond to the factual record, as she submitted portions of it.  
16

17           The Councilmember submitted to this Court a decision by the Seattle Ethics and  
18 Elections Commission addressing this very allegation, where the Councilmember is quoted:  
19 “... Councilmember Sawant ... told us that the SEC [Seattle Executive Committee of the  
20 Socialist Alternative party] does not take votes on matters coming before the City Council.  
21 She consults with the SEC . . . She noted that with the decision to dismiss the staff members  
22

23 \_\_\_\_\_  
24 <sup>3</sup> See also more specifically 4.16.070 - Prohibited conduct

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

3. Perform any official duties when it could appear to a reasonable person, having knowledge of the relevant circumstances, that the covered individual's judgment is impaired because of either (a) a personal or business relationship ....

1 and the decision to confirm Chief Best, *she had informed the SEC that she thought those were*  
2 *the proper decisions, and ultimately persuaded the SEC to side with her opinion.*” [emphasis  
3 added] Iglitzin Decl, Exhibit F, Letter Decision of Seattle Ethics and Elections Commission  
4 Director Wayne Barnett, March 26, 2019, Re Cases 19-2-1018-1 and 19-1-3035-1, page 1.  
5 This document supplies facts that the Councilmember had to persuade the SEC to concur with  
6 her decision to fire an employee, not simply ask advice. This is delegation of a decision to an  
7 outside body, even if the Councilmember is also a member of the outside body. These facts  
8 show actual knowledge of facts indicating that the Councilmember intended to commit an  
9 unlawful act, a breach of ethics.

11 The Petitioner submitted documents from the media site “SCC Insight”<sup>4</sup> that appear to  
12 be memoranda and letters from the SEC as well as letters and a report from the National  
13 Executive Committee. The information in these documents is consistent with the interview of  
14 the Councilmember in the Letter she submitted from Ethics and Elections. The documents are  
15 written by persons who are members of the SEC and thus have firsthand information that  
16 support a basis of knowledge for the allegations. See Lou Decl, Exhibit J, Response to the  
17 Letters sent to the NC on 1/21/18 By Philip L. and Stephanie K., EC Members, January 24,  
18 2018, page one paragraph 6 (“The EC [Seattle Executive Committee], through majority votes,  
19 has every right to take decisions. This includes deciding to lay off Freeman and Whitney...”  
20 and p2. Para 11 (“But it was the EC, not Adam, who took the decision to terminate Whitney’s  
21 work on the Council office, and the decision to end his employment with the SA as well...”).

24 To be fair, there are also documents that support a case for the Councilmember. See  
25 Lou Decl, Exhibit K, Greetings NC Members and Observers, signed by Kailyn (NC elected

1 alternate, Seattle EC member), undated, page one (“I had no concerns about the decision [to  
2 fire], as it was my understanding that it is the purview of the EC and NC comrades leading the  
3 Council work (Kshama and Adam) to make decisions about staffing for that office.”).

4 But in this proceeding, this Court’s role is not to weigh factual disputes over  
5 allegations, but to examine whether, if the allegations, taken as true, are sufficient. The Ethics  
6 and Elections Letter submitted by the Councilmember and Exhibit J are in some agreement that  
7 there is a basis of knowledge for the petitioner’s allegations that the Councilmember consulted  
8 and ultimately, the Councilmember had to persuade the Seattle Executive Committee of the  
9 Socialist Alternative to discharge an employee, effectively delegating her City staffing decision  
10 to an outside body, of which she was a member.

11 The allegations are factually sufficient, and establish a prima facie case of misfeasance,  
12 malfeasance, and violation of the oath of office under the cited Seattle Municipal Code of  
13 Ethics.

14 Are these allegations legally sufficient?

15 There are two additional issues to address: was this a discretionary decision by the  
16 Councilmember, and what effect, if any, should be given the decision by Mr. Barnett, Director  
17 of Ethics and Elections, to dismiss a similar allegation/charge?

18 Discretionary decisions are rarely subject to recall, and hiring and firing is inherently a  
19 discretionary act. But the allegations are not that the Councilmember exercised her discretion  
20 in a wrongful manner. The allegations are that the Councilmember delegated the discretion to  
21 fire and hire to the Seattle Executive Committee of the Socialist Alternative, of which the  
22  
23  
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25

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<sup>4</sup> The Barnett Ethics decision, quoted above, also cited SCC Insight as a source.

1 Councilmember is but one member. The allegations are not about the exercise of discretion  
2 but about the delegation of discretion to a body outside the City government.

3 The Councilmember also points to the Ethics and Elections Commission Director  
4 Wayne Barnett's decision of March 26, 2019 to dismiss these same allegations as persuasive  
5 authority that the allegations are insufficient. Exhibit F, Iglitzin Decl. But the reasoning of  
6 Mr. Barnett is not persuasive, to say the least. Mr. Barnett, in his letter decision, began by  
7 appearing to address the factual question of whether the Councilmember had delegated  
8 decision-making power to the Socialist Alternative. But instead of reaching a factual  
9 determination on this issue, Mr. Barnett decided that it didn't matter if she did: all elected  
10 officials are "free to structure their decision-making processes as they wish, subject to the will  
11 of the voters..." His conclusion appears to be that delegating decision-making to an outside  
12 political body, even if true, is a political question and not a legal or ethical one.  
13  
14

15 That conclusion is not supported by the Seattle Municipal Ethics Code, SMC 4.16.020  
16 and .070 (3). The Ethics Code policy specifically covers independence of public officials. The  
17 "shall not" provisions of .070 specifically prohibit performing official duties, if it would appear  
18 to a reasonable person that the "covered individual's" (Councilmember's) judgement would be  
19 impaired because of a personal or business relationship. While the word "impaired" can have  
20 several meanings, one such definition is lacking full function. Under the City Ethics code,  
21 which requires the City business be done by City officials and employees, full function would  
22 presumably mean that people employed by the City decide who staffs the Councilmember's  
23 office, not an outside body, even if the Councilmember is a member of that body.<sup>5</sup>  
24  
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<sup>5</sup> The SEC's decision to vote for the confirmation of Chief Best as Police Chief is not an allegation here so is not addressed.



1 The Court concludes that the charge defines “substantial conduct clearly amounting to  
2 misfeasance, malfeasance or a violation of the oath of office” under the Seattle Municipal  
3 Ethics Code and there is no legal justification for the challenged conduct.

4 **The Second Charge (2) or (B)**

5 The Petitioner’s second charge is that the Councilmember misused City resources in  
6 promoting a ballot initiative “or other electioneering “in Jan-Feb of 2020. Statement of  
7 Charges at 2-3/7. <sup>6</sup>

8 Are the allegations factually sufficient? The charges are detailed in most respects,  
9 alleging that the Councilmember intentionally used City resources to promote a “ballot  
10 initiative” from January-February 2020. The ballot initiative is not specifically named, but  
11 once again, both parties appear to assume that this charge focuses on the Tax Amazon ballot  
12 initiative and submit materials on this assumption.  
13

14 The Court specifically goes beyond the face of the petition to include the fact that the  
15 Tax Amazon ballot initiative was the ballot initiative in question. In re Recall of West, 155  
16 Wn.2d, 155 Wn.2d at 666. The charge is factually sufficient. The Councilmember had  
17 sufficient actual notice to meaningfully respond to the factual record.  
18

19 The Councilmember disputes that there is substantial evidence to support this charge of  
20 using City resources. In In Re Recall of Inslee, the Court held

21 State officers are prohibited from using the facilities of an agency to  
22 promote or oppose a ballot proposition. RCW 42.52.180(1). But an  
23 official may comment on a proposition, provided there is no actual,  
24 measurable expenditure of public funds. RCW 42.52.180(2)(b). State  
25 law allows “[d]e minimis use of public facilities by statewide elected

<sup>6</sup> In addition to the charges, Mr. Lou attached Exhibits L-O. The Councilmember attached Exhibit I, Iglitzin Decl, was not attached. All of these materials were reviewed.

1 officials ... incidental to the preparation or delivery of permissible  
2 communications, including written and verbal \*575 communications  
3 initiated by them of their views of ballot propositions.” RCW  
4 42.52.180(2)(e).

5 In Inslee, the Governor’s behavior was considered *de minimis* when he attended carbon  
6 tax initiative campaign events, provided an agenda to tribal leaders for a meeting to discuss the  
7 initiative, and otherwise campaigned for it at other events. Clearly, speaking is not covered  
8 here-a political officer may speak in favor of a ballot initiative. Her views are not at issue.

9 But the facts submitted support the allegation that there is substantial evidence, that the  
10 Councilmember’s office spent \$2000 and assisted in other ways. The facts underlying the  
11 allegations are found in Exhibit L and N of the Lou Declaration. Exhibit L are the charges  
12 filed by the Seattle Ethics and Elections Commission and they attach exhibits including a web  
13 page message from the Councilmember for a Tax Amazon 2020 campaign that includes the  
14 following quote from her in the second paragraph: “Now join my council office and a  
15 coalition....” The date is January 25, 2020. Exhibit N is a news article from SCC Insight,  
16 “Catching up on Sawant’s Alleged Misdeeds,” May 5, 2020, where the reporter notes that he  
17 filed a public disclosure request and received receipts from the Council’s financial office that  
18 over \$2000 was spent to “advertise meetings on January 25 and February 9 to organize a  
19 ‘ballot initiative’ provide food for the meetings; and purchase posters and wood pickets for the  
20 signs.” Id. These are actual resources being spent to promote an initiative, which is prohibited  
21 by law, and not a *de minimis* use incidental to the delivery of message. These facts are from  
22 Councilmember’s own words and from the City’s documents. These facts show actual  
23 knowledge of facts indicating that the Councilmember intended to commit an unlawful act and  
24 form a basis of knowledge of the allegations.  
25

1           Are the allegations legally sufficient? The Councilmember argues that under the law, a  
2 misuse of City resources can only occur *after* a ballot initiative is filed. Brief at 8. She argues  
3 that under RCW 42.17A.555 and RCW 42.17A.005, an elective official may use City resources  
4 before the initiative is filed to promote that initiative. This Court disagrees for two reasons:  
5 that is not what the statute says, and the Seattle Municipal Code even more broadly prohibits  
6 the conduct here.  
7

8           The Revised Code of Washington 42.17A.555 reads as follows

9           **Use of public office or agency facilities in campaigns—Prohibition—Exceptions.**

10           No elective official nor any employee of his or her office nor any person appointed to  
11 or employed by any public office or agency may use or authorize the use of any of the facilities  
12 of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for  
13 election of any person to any office or for the promotion of or opposition to any ballot  
14 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.

14           “Ballot Proposition means” (RCW 42.17A.005)

15           (4) "Ballot proposition" means any "measure" as defined by RCW **29A.04.091**, or any  
16 initiative, recall, or referendum proposition proposed to be submitted to the voters of the state  
17 or any municipal corporation, political subdivision, or other voting constituency from and after  
18 the time when the proposition has been initially filed with the appropriate election officer of  
that constituency before its circulation for signatures.

18           This Court does not read this statute the same way as the Councilmember. The RCW  
19 language “proposed to be submitted to the voters of the state” and “from and after the time  
20 when the proposition has been initially filed” is quite broad. Moreover, the purpose of the  
21 statute, which originally was an Initiative, was to ban the use of government resources for  
22 ballot measures. It was amended in 2010 to include exceptions. One of the exceptions is not  
23 allowing the use of government resources to promote a ballot measure before it is filed or  
24 certified.  
25

1 The Seattle Municipal Code also applies here and clearly prohibited the conduct. It  
2 states that City facilities may not be used for “the promotion of or opposition to any ballot  
3 proposition.” Ballot proposition is defined as either a matter that is “submitted to or proposed  
4 for submission to the voters,” which is different language than and arguably broader than the  
5 Revised Code of Washington:

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

7 No elected official nor any employee of his or her office nor any person appointed to or  
8 employed by any public office or agency may use or authorize the use of any of the facilities  
9 of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for  
10 election of any person to any office or for the promotion of or opposition to any ballot  
11 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; .....

12 SMC 2.04.010 - Definitions

13  
14 "Ballot proposition" means any measure, question, initiative, referendum, recall, or  
Charter amendment submitted to, or proposed for submission to, the voters of the City.

15 The Court concludes that the allegations “establish a prima facie case of misfeasance,  
16 malfeasance, or violation of the oath of office” and are “stated in concise language and provide  
17 a detailed description” in order to “enable the electorate and a challenged official to make  
18 informed decisions.  
19

20 The charge defines “substantial conduct clearly amounting to misfeasance, malfeasance  
21 or a violation of the oath of office” under the cited State and City law and there is no legal  
22 justification for the challenged conduct.

23 **The Third Charge (3) or (C)**

24 The Petitioner’s third charge is that the Councilmember misused her official position by  
25 “admit[ing] hundreds of individuals at night into City Hall on or about the night of June 89,

1 2020, when it was closed to the public because of COVID-19 and failing to follow the City's  
2 COIVD -19 precautions for the visitors ... and it led to janitorial staff making complaints about  
3 the incident because of safety concerns.” Statement of Charges at 3-4/7. <sup>7</sup>

4 Are the allegations factually sufficient?

5  
6 The allegations are quite specific and allege that the Councilmember let hundreds of  
7 people into a closed City Hall after hours on June 9. The Governor's COVID Orders were in  
8 effect allowing no gatherings at all at that time. The allegations, taken as true, establish that  
9 the Councilmember knowingly allowed in hundreds of people into City Hall despite the  
10 Governor's Proclamation. What knowledge of the facts does the petitioner have? He has  
11 attached to his declaration, as Exhibits A, B & C, the Councilmember's retweets of tweets by  
12 citizens or news organizations that the Councilmember that she had a key to City Hall and let  
13 in protestors, and an additional article. This, in part, is a sufficient factual basis under In re  
14 Recall of West.

15  
16 The more difficult question is whether the facts show that the Councilmember intended  
17 to commit the unlawful act of violating the Governor's Proclamations on the pandemic. Put  
18 another way, was this intended as a demonstration, which, from her point a view, was allowing  
19 “the power and uprising evident in the streets [be] seen in the halls of power in Seattle” or as  
20 opponents have put it, “political theater,” neither of which, alone, are sufficient for recall  
21 charges? Or an intentional breach of public health laws on the pandemic?  
22

23  
24 <sup>7</sup> In addition to the charges, Mr. Lou attached Exhibits A-D, retweets by the Councilmember stating that  
25 she had let the protestors in; and the Governor's Proclamations on COVID and ban on social gathering. The  
Councilmember attached Exhibit A-E, Iglitzin Decl, which include statements by the Governor making statements  
on May 30, 2020 about the right to speak and protest; attaching news stories about the Mayor meeting with  
protestors in early June; and showing four other Councilmembers being present at a BLM protest at or around  
June 7. All of these materials were reviewed.

1 By contrast, recently the Supreme Court upheld a trial court order for certification of a  
2 recall charge to the Snohomish County voters involving the Governor's Proclamations:

3 "Adam Fortney endangered the peace and safety of the community and violated his  
4 statutory duties under RCW 36.28.010 and/or 36.28.011 and/or oath of office by  
5 inciting the public to violate Governor Inslee's 'Stay Home – Stay Healthy'  
6 proclamation,"

7 98683-5, Supreme Court of Washington, In re Recall of Fortney. This Court is not privy to all  
8 of the facts of that case, but the essence of these allegations is that Sheriff Fortney refused to  
9 enforce the Proclamation. The Councilmember is not accused of this. Far from it. She was  
10 demonstrating for the Tax Amazon ballot initiative.

11 On the other hand, it is very difficult to ignore the allegation (and underlying facts) that  
12 City Hall was locked to the public precisely *because* of the pandemic and because of the public  
13 health Proclamations of the Governor. Thus, her alleged act of unlocking the building closed  
14 due to the pandemic and letting in the protestors inferentially proves the intent needed to allow  
15 the charge/allegation to go forward.

16 Are the allegations legally sufficient?

17 The allegations are legally sufficient as described above.

18 **The Fourth Charge (4) or (D)**

19 This has been conceded as insufficient by Petitioner.

20 **The Fifth Charge (5) or (E)**

21 The Petitioner's fifth charge is that the Councilmember led a protest march to Mayor  
22 Jenny Durkan's private residence whose address is in the State confidential program, and "she  
23 and the organizers knew that the Mayor Durkan's address was protected under the state  
24  
25

1 confidentiality programs because of threats ...” due to her work as a US Attorney. Statement  
2 of Charges at 5/7. <sup>8</sup>

3 Are the allegations factually sufficient?

4 The allegations, that the Councilmember “used her official position to lead a protest  
5 march to lead a protest march to Mayor Durkan’s home... and “ she and her organizers knew  
6 her address was protected” are very specific. The Councilmember disputes that she knew the  
7 address of the Mayor or led the protest march. This may be true, but it is not the role of the  
8 Court, in this proceeding, to determine the truth of the allegations.  
9

10 The basis of the allegations is a letter from the Mayor herself that was quoted in several  
11 newspaper articles including the Seattle Times, June 30, Lou Decl, Exhibit F.

12 Are the allegations legally sufficient?

13  
14 The charge specifically claims that the Councilmember knew the Mayor’s address,  
15 knew it was under a lawful confidentiality program because of death threats against the Mayor,  
16 and even knowing that, led a public march to her house. The address confidentiality program  
17 is found in RCW 40.24.030 and those who criminally violate it are guilty of the class C felony  
18 of harassment. RCW 9A.46.020. These facts show actual knowledge of facts indicating that  
19 the Councilmember intended to commit an unlawful act and form a basis of knowledge of the  
20 allegations. This differs from the City Hall allegations, as the allegations, supported by a basis  
21 of knowledge, are that the Councilmember and fellow organizers knew the Mayor’s address,  
22 knew it was confidential, and led the protestors right to the Mayor’s home-where the  
23  
24  
25

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<sup>8</sup> In addition to the charges, Mr. Lou introduced Exhibits E-F, news reports about the demonstration and Mayor Durkan’s reaction. The Councilmember submitted her own Declaration denying that she led the protest and denying that she knew where Mayor Durkan lived. All of these materials were reviewed.

1 Councilmember is pictured speaking in the submitted materials. This is more than sufficient to  
2 satisfy the intent requirement.

3 **The Sixth Charge (6) or (F)**

4 This has been conceded as insufficient by Petitioner.

5 **The Court hereby ORDERS:**

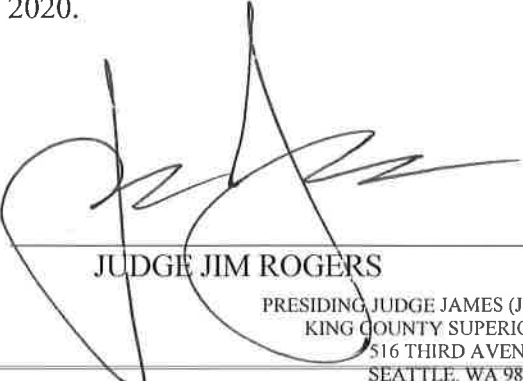
6  
7 As to charges one (A), two (B), three (C) and five (E) listed in the petition, that these  
8 allegations “establish a prima facie case of misfeasance, malfeasance, or violation of the oath  
9 of office” and are “stated in concise language and provide a detailed description” in order to  
10 “enable the electorate and a challenged official to make informed decisions, with the factual  
11 additions noted. The petitioner has shown that actual knowledge of facts indicating that the  
12 Councilmember intended to commit an unlawful act.

13  
14 The charges one (A), two (B), three (C) and five (E) listed in the petition define  
15 “substantial conduct clearly amounting to misfeasance, malfeasance or a violation of the oath  
16 of office” and there is no legal justification for the challenged conduct. These four charges are  
17 ORDERED CERTIFIED for election;

18 The charges four (D) and six (F) listed in the petition are insufficient for the reasons  
19 noted above and are Dismissed;

20 Pursuant to the Councilmember’s request, the parties may propose or comment on the  
21 ballot synopsis as proposed by filing a pleading by this Friday at 4:30 p.m.

22  
23 DATED this 16th day of September, 2020.

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JUDGE JIM ROGERS