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5 JUDGE JIM ROGERS

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7 **SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

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10 IN RE THE MATTER OF RECALL
11 CHARGES AGAINST CITY OF
12 SEATTLE COUNCIL MEMBER
13 KSHAMA SAWANT

NO. 20-2-13314-1SEA

ORDER ON MOTION FOR
RECONSIDERATION

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16 Councilmember Kshama Sawant has filed a Motion for Reconsideration. Per CR 60,
17 the Court did not request a response brief. New factual materials typically are not allowed on a
18 Motion for Reconsideration, and this Court did not consider the Councilmember's Declaration.

19 The Motion generally argues that the Court did not correctly consider the burden to
20 prove the Councilmember's specific intent to commit each act and intent to act unlawfully. In
21 re Recall of Pearsall-Stipek, 141 Wn.2d 756. While the legal standard is correctly stated, the
22 facts are presumed true, and the Court may draw inferences regarding intent from them, if
23 factually sufficient. It is repeatedly implied that without a clear statement of intent to break the
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1 law made by the Councilmember herself, or that she was specifically aware of the law, this
2 standard cannot be met, and thus any charge in the Petition would be factually insufficient.
3 The Court disagrees that this is the legal requirement. The Councilmember is presumed to
4 have knowledge of the law and ethical code, and intent can be inferred from the surrounding
5 circumstances.

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7 Charges A and B: The Councilmember argues that because the law is not clear that it
8 was a breach of law and ethics to delegate her employment decision to the Seattle Executive
9 Committee of the National Socialist Alternative party, so she could not have intended to break
10 it. In other words, she argues that a councilmember would not know that she cannot delegate a
11 City employment decision to her outside political party's Executive Council. The Court has
12 ruled on the law and ethics code, and officials are deemed to be on notice of the law.

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14 She similarly argues that the law is not clear that the Councilmember could not spend
15 City resources to promote a ballot initiative, thus she could not have intended to break the law.

16 In Pearsall-Stipek, there was some evidence that the respondent did not intend to falsely
17 state that she had earned a degree from the University of Washington. She has testified to the
18 falsehood in a deposition but then she had then corrected herself. That specific charge was
19 found insufficient. However, the Court inferred intent for another charge because during trial
20 testimony she was sworn under oath and again testified falsely. *Id* at 780. Thus, even where
21 the Court had conflicting evidence of intent, it examined the surrounding circumstances of the
22 statement. The Court is allowed to do so for evidence of sufficiency.

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24 In In re Sandhaus, one charge at issue was the Respondent failed to secure a required
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1 bond. Sandhaus presented undisputed evidence that he thought that the County Auditor
2 handled all such bonds, and once told of the mistake, sought one as soon as he could thereafter.
3 134 Wn.2d at 670. Thus, Sandhaus argued that he did not intend to commit misfeasance, etc.,
4 and he corrected his mistake once he realized it. There are no such set of facts or statements
5 here.

6
7 Here, for Charges A and B, there were foundational facts that the Councilmember
8 intentionally delegated an employment decision to an outside group, and admitted doing so
9 (examined in the earlier Order) and that she intentionally spent City money for the Tax
10 Amazon Initiative (also discussed in the earlier Order). From the facts can be inferred an
11 intent to commit the act and the law.

12 Finally, In re Ackerson, 143 Wn.2d 366, is distinguishable. The Respondent argued
13 that a more stringent standard for intent and that corroboration, similar to the corpus delicti
14 rule in criminal law, was the appropriate standard. The Court rejected that argument, but
15 examined a charge under the existing intent standard. The charge was that Ackerson admitted
16 in conversation that he pocketed campaign money. There were no details about where or when
17 he said this. Campaign finance records showed that he spent more in his campaign than he
18 took in. The charge against Ackerson simply failed for lack of factual sufficiency. By contrast
19 in this case, there are many specifics about events in question. Thus, Ackerson is very
20 different than these charges. (Another problem with the Ackerson case is the lack of a clear
21 record, because there was no record made at the time of the hearing, but a report of
22 proceedings apparently after the fact).
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1 Charge C: The Councilmember largely repeats her arguments from the first Motion.
2 Again, the Court laid out the arguments on this issue for and against, but the presumption is
3 that the facts as submitted by the Petitioner are true, and then the only question is whether they
4 are factually sufficient, not whether the Councilmember rebuts them in a declaration. Motion
5 Denied.

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7 Charge E: The Councilmember argues that there are not specific facts to support
8 factual sufficiency. There are. The facts are based upon a news article, which quotes the
9 Mayor and Mayor Durkan's statements are quite specific about the fact that the
10 Councilmember knew her address, knew it was legally protected due to death threats, but led a
11 march to her house. That the charge is based upon a statement made by the person to whose
12 house she allegedly led a crowd does not make it less factually sufficient. Courts do not have
13 the authority to look at the truthfulness of the charges or question the underlying motivations.
14 Cole, 103 Wn.2d at 287. Instead, courts must consider whether, accepting the allegations as
15 true, the charge on its face supports the conclusion that the officer in some way abused his
16 position. Teaford, 104 Wn.2d at 586. Finally, the news source includes a report of the rally at
17 the Mayor's house and shows a picture by the news organization of the Councilmember giving
18 a speech at the Mayor's house, all corroborating and quite specific facts. Exhibit E to Decl of
19 Lou, Brief in Support.
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21 Motion Denied in its Entirety.

22 DATED this October 9, 2020
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JUDGE JIM ROGERS

King County Superior Court
Judicial Electronic Signature Page

Case Number: 20-2-13314-1
Case Title: IN RE THE MATTER OF RECALL CHARGES AGAINST CITY
OF SEATTLE COUNCILMEMBER KSHAMA SAWANT
Document Title: ORDER RE DENYING RECONSIDERATION

Signed by: Jim Rogers
Date: 10/12/2020 9:00:00 AM



Judge/Commissioner: Jim Rogers

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