April 27, 2020

Dear Council President González,

I am writing to you today regarding Council Bills 119772 and 119774, included in the Payroll Expense Tax Package. My objective is first and foremost to notify you of my decision to not participate in this week’s meeting of the Select Budget Committee, but also to propose alternate paths for your consideration.

By now, you are familiar with my assessment of the Law Department’s analysis of the restrictions on the City Council related to the Governor’s Proclamation 20-28 on issues before public bodies like the City Council in light of the Open Public Meetings Act and the State Attorney General’s guidance on the same. I believe that the most relevant excerpt from the State Attorney General’s guidance can be found in these words:

“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.”

Attached, under attorney-client privilege, is legal advice from the Law Department specific to Council Bills 119772 and 119774.

Given my concerns, I declined to participate in last week’s Select Budget Committee. Like you, I was hoping for additional guidance from the State Attorney General’s office related to what actions the Council can take with the Governor’s extension of Proclamation 20-28 on April 23rd. I have learned that the extension mirrors the language of the original proclamation and that the State Attorney General did not provide any additional guidance.

As Council President the burden and authority falls on you to make determinations of what committees are permitted to meet. I believe this burden and authority gives you significant leverage over what bills can be placed on Committee meeting agendas chaired by other committee members.

In your capacity as Council President, I am asking that you consider my request that the Council pursue one of two alternative paths in our deliberations on CB 119772 and CB 119774.

ALTERNATIVE PATH 1

Allow continued deliberations on Council Bills 119772 and 119774 only if both bills are scoped to provide a spending plan narrowly tailored to address needs arising from “COVID 19 and the current public health crisis,” and a revenue source sufficient and time limited to meet those set of needs.

ALTERNATIVE PATH 2

If you’d prefer that we consider a legislative package that extends beyond a spending plan narrowly tailored to address needs arising from “COVID 19 and the current public health crisis,” and a revenue source sufficient to meet ongoing needs unrelated to “COVID 19 and the current public health crisis,” I’d respectfully request that you consider, again in your capacity as Council President, directing the Select Budget Committee to take this issue up when we are no longer under restrictions on the City Council related to the Governor’s Proclamation 20-28.

Either path allows for a vote on a bill that is either a) emergency legislation, and thus “referendum-proof” but also defeated if the Mayor declines to sign or vetoes the bill(s) or b) not emergency legislation and thus not “referendum proof,” nor needing to be signed by the Mayor, nor inoculated from the Council power to override a Mayor’s veto. Though my letter is focused upon my OPMA concerns, my understanding of the reality of the political vulnerabilities created under both of these approaches, leads me to the conclusion that without Mayor Durkan’s support for Emergency Legislation, a lasting, strong Pay Roll Expense Tax Package would be best placed on the ballot, after deliberating on this matter when we are able to meet in accordance with the OPMA.

I understand that there is an unknown factor that plays a significant role in your consideration of my proposed paths. Specifically, the possibility that Governor’s Proclamation 20-28 will not be renewed after May 4 and, as a consequence, portions of RCW 42.30 and RCW 42.56 that require in-person meetings or contact may necessitate resumption of in-person meetings. Given we do not know whether Proclamation 20-28 will be renewed, I understand and respect that you may need to decline to consider my request for alternative path 1 or 2 at this time.

Returning to my first objective, I feel the need to make my concerns known to you and my Council colleagues as it makes transparent my decision to not attend this week’s Select Budget Committee. In the possible event of the Governor not renewing Proclamation 20-28, I and my staff will endeavor to have my amendments to Council Bills 119772 and 119774 ready for such time that we can meet in accordance with the OPMA.

Thank you for your leadership in this very difficult and challenging time. I appreciate your openness to and respect for my perspective regarding the sanctity of the democratic principles that are the foundation of the Open Public Meetings Act.

Sincerely,



Lisa Herbold

CC: Councilmembers