



ETHICS REVIEW COMMISSION MINUTES

**SPECIAL CALLED MEETING
Tuesday, September 23, 2014**

The Ethics Review Commission (“Commission”) convened in a special called meeting on Tuesday, September 23, 2014, at Waller Creek Center, 625 E. 10th Street, Room 104, in Austin, Texas.

Chair Austin Kaplan called the meeting to order at 6:08 p.m.

Commission members in attendance: Chair Austin Kaplan, Vice Chair Peter Einhorn, Sylvia Hardman-Dingle, Donna Beth McCormick, and James Ruiz. Not present: James Sassin and Dennis Speight.

Staff in Attendance: Assistant City Attorney Cynthia Tom; James Cousar, outside legal counsel for the Commission; and Office of the City Clerk Boards and Commissions Coordinator Deena Estrada.

Items No. 1.a. and 1.b.: The Commission went into executive session at 6:10 p.m. to discuss legal issues related to: (1) a complaint filed on August 29, 2014, by Gloria Morales against Monica A. Guzmán alleging violations of residency, criminal activity, and low-income housing subleasing requirements (Private consultation with legal counsel pursuant to Section 551.071 of the Government Code); and (2) a complaint filed on September 3, 2014, by Shaun Ireland against Fred McGhee alleging violations of City Code, Chapter 2-2 (Campaign Finance) (Private consultation with legal counsel pursuant to Section 551.071 of the Government Code).

The Commission returned from executive session at 6:53 p.m.

Item No. 2.a.: The Commission convened a preliminary hearing under Section 2-7-44 of City Code to consider a complaint filed on August 29, 2014, by Ms. Morales against Ms. Guzmán alleging violation of residency, criminal activity, and low-income housing subleasing requirements.

Chair Kaplan stated his opinion that the Commission did not have jurisdiction over the subject matter of the complaint and that the complaint did not state specific City Code or Charter requirements alleged to be violated, as required by City Code. Chair Kaplan stated his intention to bypass the normal statements by the complainant and respondent in order for the Commission to take action on the complaint.

Commission Member Ruiz made a motion that reasonable grounds do not exist to believe that a violation within the jurisdiction of the Commission had occurred as a result of the actions or omissions alleged to have occurred in the complaint. The motion was seconded by Vice Chair

Einhorn. Chair Kaplan discussed the Commission's subject matter jurisdiction and the authority of the Commission to dismiss a complaint for lack of subject matter jurisdiction at preliminary hearing. There was discussion by Commission members and Commission Counsel Cousar. The motion was approved on a 5-0 vote. Commission Member Sassin and Commission Member Speight absent.

Commission Member Hardman-Dingle made a motion to allow the complainant an opportunity to amend the complaint within 10 business days to bring it within the Commission's jurisdiction, which was seconded by Vice Chair Einhorn. The motion was approved on a 5-0 vote. Commission Member Sassin and Commission Member Speight absent.

Commission Member Ruiz made a motion that the complaint currently before the Commission be dismissed, which was seconded by Commission Member Hardman-Dingle. The motion was approved on a 5-0 vote. Commission Member Sassin and Commission Member Speight absent.

Vice Chair Einhorn made a motion to delegate to Chair Kaplan the responsibility to draft an order on the preliminary hearing for the complaint currently before the Commission, which was seconded by Commission Member Hardman-Dingle. The motion was approved on a 5-0 vote. Commission Member Sassin and Commission Member Speight absent.

Commission Counsel Cousar and Assistant City Attorney Tom provided information to the complaint, Ms. Morales, regarding the Commission's jurisdiction and procedures for re-filing her complaint.

Item No. 2.b.: The Commission convened a preliminary hearing under Section 2-7-44 of City Code to consider a complaint filed on September 3, 2014, by Mr. Ireland against Dr. McGhee alleging violations of City Code, Chapter 2-2 (Campaign Finance).

Commission Counsel Cousar described the proceeding.

The complainant, Mr. Ireland, appeared in person and under oath and made a statement of the alleged violation.

The respondent, Dr. McGhee, appeared in person and under oath and made a statement responding to the alleged violation. In response to questions from the Commission, Dr. McGhee admitted to the violating Section 2-2-14 of City Code.

Commission Member Hardman-Dingle made a motion that, based on the admission by Dr. McGhee, the Commission should make determinations regarding criminal prosecution and civil sanctions at the preliminary hearing, without the need for the Commission to hold a final hearing. The motion was seconded by Commission Member McCormick. The motion was approved on a 5-0 vote. Commission Member Sassin and Commission Member Speight absent.

Vice Chair Einhorn made a motion that a violation of Section 2-2-14 of City Code occurred, which was seconded by Commission Member Ruiz. The motion was approved on a 5-0 vote. Commission Member Sassin and Commission Member Speight absent.

Commission Member Hardman-Dingle made a motion that the Commission find that the violation was de minimis and that the violation not be referred to the City Attorney for criminal prosecution under Section 2-7-49(b) of City Code. The motion was seconded by Commission Member Ruiz. The motion was approved on a 5-0 vote. Commission Member Sassin and Commission Member Speight absent.

Vice Chair Einhorn made a motion that the Commission issue the sanction of a letter of admonition to Dr. McGhee because the violation was minor or may have been unintentional but calls for a more substantial response than a letter of notification. The motion was seconded by Commission Member Hardman-Dingle. The motion was approved on a 4-1 vote. Commission members voting in favor: Chair Kaplan, Vice Chair Einhorn, Commission Member Hardman-Dingle, and Commission Member Ruiz. Commission member voting in opposition: Commission Member McCormick. Commission Member Sassin and Commission Member Speight absent.

Commission Member Hardman-Dingle made a motion to delegate to Chair Kaplan the responsibility to draft the Commission's order on preliminary hearing and the letter of admonition to Dr. McGhee. The motion was seconded by Commission Member Ruiz. The motion was approved on a 5-0 vote. Commission Member Sassin and Commission Member Speight absent. The preliminary hearing was concluded.

Item No. 2.c.: Assistant City Attorney Tom briefed the Commission on the proposed revisions to the Commission complaint form. Boards and Commissions Coordinator Estrada briefed the Commission on the City Clerk's procedures relating to Commission complaints. Vice Chair Einhorn made a motion to adopt the revised complaint form with the addition of the following phrase at the end of the form: "THIS FORM MUST BE SUBMITTED TO THE OFFICE OF THE CITY CLERK," which was seconded by Commission Member McCormick. The motion was approved on a 5-0 vote. Commission Member Sassin and Commission Member Speight absent.

Item No. 3: There were no speakers for general citizen communication.

Item No. 4: The Commission discussed future agenda items to include: complaint preliminary hearings, officer elections, setting the 2015 regular meeting schedule, and reports from working groups.

The meeting adjourned at 8:12 p.m.