

CITY OF AUSTIN ETHICS REVIEW COMMISSION

KENT C. ANSCHUTZ

Complainant

v.

ARIF PANJU

Respondent.

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**Complaint No. 20150811
(Supplemented)**

ORDER ON FINAL HEARING

I. PROCEDURAL HISTORY

On August 11, 2015, Kent C. Anschutz (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a sworn Complaint (“the Original Complaint”) against Arif Panju (“Respondent”). On that date, the City Clerk sent a copy of the Original Complaint and a notice of filing to the City Attorney, the Ethics Review Commission (“the Commission”), Complainant, and Respondent.

On August 17, 2015, Commission Executive Liaison and City of Austin Assistant City Attorney Cynthia Tom (“Tom”) issued a Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for August 31, 2015, and advising Respondent and Complainant of procedures for the Preliminary Hearing.

On August 27, 2015, Complainant filed a sworn Supplement to the sworn Original Complaint (“the Supplement”), which the City Clerk on that date sent to the City Attorney, the Commission, Complainant, and Respondent.

On August 27, 2015, Tom issued a Revised Notice of Preliminary Hearing setting a Preliminary Hearing of the Commission for August 31, 2015, on the Original Complaint and the



Supplement and advising Respondent and Complainant of procedures for the Preliminary Hearing.

On August 31, 2015, the Commission conducted a Preliminary Hearing. In its Order on Preliminary Hearing, the Commission determined that reasonable grounds did not exist to believe that a violation of Section 2-7-62(B) had occurred as a result of the actions or omissions of Respondent as alleged in the Supplement, and the Commission dismissed that allegation. Also in its Order on Preliminary Hearing, the Commission determined that reasonable grounds existed to believe that a violation of Section 2-7-63(A) and Section 2-7-64(A) and (B) of the City Code had occurred as a result of the actions or omissions of Respondent as alleged in the Original Complaint and Supplement. The Commission set the allegations of violations of Section 2-7-63 and Section 2-7-64 of the City Code for Final Hearing on October 27, 2015.

On October 16, 2015, Tom issued a Notice of Final Hearing and Request for Witnesses to the parties. The October 16 Notice advised Complainant and Respondent of procedures for the Final Hearing and made requests for witnesses pursuant to Section 2-7-46 of the City Code. Neither party submitted any pre-filed any evidence for the Final Hearing in addition to the evidence filed with the Commission at the Preliminary Hearing.

On October 23, 2015, the agenda for the October 27 meeting of the Commission and Final Hearing on this matter was timely posted.

Prior to the October 27 Final Hearing, Tom confirmed the attendance of four witnesses at the Final Hearing as requested by the Commission: City of Austin Historic Preservation Officer Steve Sadowsky, City of Austin Development Services Manager Jerry Rusthoven, City of Austin



Neighborhood Housing Real Estate and Development Manager Regina Copic, and Travis Central Appraisal District Chief Appraiser Marya Crigler.

II. FINDINGS OF FACT

1. Respondent is a member of the City of Austin Historic Landmark Commission and became a member prior to July 27, 2015.
2. Complainant alleges that Respondent violated Section 2-7-63(A) (Prohibition on Conflict of Interest), Austin City Code on July 27, 2015, and on August 24, 2015.
3. Complainant alleges that Respondent violated Section 2-7-64(A) and (B) (Disclosure of Conflict of Interest), Austin City Code on August 24, 2015.
4. Complainant attached to the Original Complaint multiple exhibits, including copies of the agenda of the July 27, 2015 Historic Landmark Commission meeting, the attendance sheet for the same meeting, a transcript of the same meeting, Respondent's statement of financial information for 2014, and an inventory of real property parcels proposed to be included in the proposed Bluebonnet Hills Historic District.
5. Complainant attached to the Supplement additional exhibits, including copies of the agenda of the August 24, 2015 Historic Landmark Commission meeting, the attendance sheet for the same meeting, and a partial transcript of the same meeting.
6. Neither Complainant nor Respondent pre-filed any evidence for the Final Hearing with the Commission.
7. Complainant and Respondent each appeared in person at the Final Hearing and made statements under oath.



8. At the Final Hearing, Respondent asked for leave from the Commission to submit evidence which was not pre-filed, but the Commission denied his request and did not accept the late evidence.
9. At the Final Hearing, all exhibits attached to the Original Complaint and Supplement by Complainant and all exhibits filed by Respondent with the Commission at the Preliminary Hearing were accepted into the record.
10. At the Final Hearing, the Commission permitted Complainant and Respondent to make introductory statements, to question and cross examine witnesses, and to make closing statements. The Commission also asked questions of the parties.
11. At the Final Hearing, the following witnesses appeared and answered questions from the parties and the Commission under oath: City of Austin Historic Preservation Officer Steve Sadowsky, City of Austin Development Services Manager Jerry Rusthoven, City of Austin Neighborhood Housing Real Estate and Development Manager Regina Copic, and Travis Central Appraisal District Chief Appraiser Marya Crigler.
12. The Commission finds that Respondent owns real property located at 506 Lockhart Drive, which is valued at more than \$5,000, and that Respondent owned such property on July 27, 2015 and August 24, 2015, the dates of the Historic Landmark Commission meetings which are the subject of the Original Complaint and Supplement.
13. The Commission finds that, at the time of the July 27, 2015 and August 24, 2015 Historic Landmark Commission meetings, the real property owned by Respondent, located at 506 Lockhart Drive, was proposed to be included within the boundaries of the proposed Bluebonnet Hills Historic District as a contributing property and that the residence



located at that address was proposed to be designated as a contributing structure within the historic district.

14. The Commission finds that the proposed creation of a historic district, such as the Bluebonnet Hills Historic District, is a zoning decision.
15. The Commission finds that at the July 27, 2015 Historic Landmark Commission meeting, Respondent participated in discussion, made a motion, and voted on the Bluebonnet Hills Historic District agenda item.
16. The Commission finds that at the August 24, 2015 Historic Landmark Commission meeting, Respondent participated in discussion on the Bluebonnet Hills Historic District agenda item but did not participate in voting on the item.
17. The Commission finds that Respondent failed to file an affidavit with the City Clerk's Office disclosing his interest in 506 Lockhart Drive prior to the August 24, 2015 Historic Landmark Commission meeting.
18. The Commission finds that Respondent failed to indicate on the attendance sign-in sheet for the August 24, 2015 Historic Landmark Commission meeting that he had a conflict of interest with regard to the Bluebonnet Hills Historic District agenda item.



III. CONCLUSIONS OF LAW

1. The October 27, 2015 Meeting of the Commission and the Final Hearing were properly noticed in accordance with Chapter 2-7 of the City Code (Ethics and Financial Disclosure) and the Texas Open Meetings Act.
2. The Commission has jurisdiction over complaints alleging violations of Section 2-1-24 of the City Code (Conflict of Interest and Recusal); Chapter 2-2 of the City Code (The Austin Fair Campaign Chapter); Article III, Section 8 of the City Charter (Limits on Campaign Contributions and Expenditures); Chapter 2-7 of the City Code (Ethics and Financial Disclosure), and Chapter 4-8 of the City Code (Regulation of Lobbyists).
3. The Commission has jurisdiction to hear complaints alleging violations of the above provisions by City officials.
4. Respondent is a City official as defined in Chapter 2-7 of the City Code.
5. The Commission has jurisdiction to hear the Original Complaint and Supplement.
6. The Original Complaint and Supplement were filed with the City Clerk, sworn to by Complainant, and identified the sections of the City Code alleged to have been violated, as required by Section 2-7-41 of the City Code.
7. Under Section 2-7-45 of the City Code, the issue to be considered by the Commission at a Final Hearing is whether a violation of the cited section of the City Code has occurred. The Commission shall make its final determination based on a preponderance of the credible evidence in the record.



8. The Original Complaint and Supplement allege that Respondent violated Section 2-7-63(A) of City Code. Section 2-7-63 of City Code states in relevant part:

§ 2-7-63 - PROHIBITION ON CONFLICT OF INTEREST.

- (A) A City official or employee may not participate in a vote or decision on a matter affecting a natural person, entity, or property in which the official or employee has a substantial interest; provided, however, that this provision shall not prohibit any member of the city council from participating in a discussion relating to a petition certified to the city council by the city clerk which petition seeks the recall of said member of the city council.
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- (C) Where the interest of a City official or employee in the subject matter of a vote or decision is remote or incidental, the City official or employee may participate in the vote or decision and need not disclose the interest.

9. Section 2-7-2(4) of the City Code defines “decision” to include “discussions or deliberations of the council, board, or commission which can or may lead to a vote or formal action by that body.”

10. Section 2-7-2(1) of the City Code defines “affected” to mean in relevant part:

reasonably likely to be subject to a direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question. For instance, a person or entity owning real property, entering into a contract with the City, or seeking a permit or franchise is “affected” by votes or decisions such as zoning of the property, approval of the contract, or granting of the permit.

11. Section 2-7-2(9) of the City Code defines “remote interest” to mean:

an interest of a person or entity, including a City official or employee, who would be affected in the same way as the general public. The interest of a councilmember in the property tax rate, general City fees, City utility charges, or a comprehensive zoning ordinance or similar decisions is incidental to the extent that the councilmember would be affected in common with the general public.

12. Section 2-7-2(7) of the City Code defines “incidental interest” to mean:

an interest in a person, entity or property which is not a substantial interest and which has insignificant value, or which would be affected only in a de minimis



fashion by a decision. This chapter does not establish dollar limits on the terms "insignificant value" and "de minimis," which shall have their usual meanings and be subject to interpretation on a case by case basis.

13. The Supplement alleges that Respondent violated Section 2-7-64(A) and (B) of City Code, which states:

§ 2-7-64 - DISCLOSURE OF CONFLICT OF INTEREST.

- (A) A City official shall disclose the existence of any substantial interest he may have in a natural person, entity or property which would be affected by a vote or decision of the body of which the City official is a member or that he serves as a corporate officer or member of the board of directors of a nonprofit entity for which a vote or decision regarding funding by or through the City is being considered.
- (B) To comply with this section, a councilmember or unsalaried City official, prior to the vote or decision, either shall file an affidavit as required by Chapter 171 (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments) of the Local Government Code or, if not so required, shall publicly disclose in the official records of the body the nature and extent of such interest.
14. The Historic Landmark Commission exercises powers beyond those that are advisory in nature, and, as such, its members are subject to the requirements of Chapter 171 of the Texas Local Government Code (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments), including the requirement to file an affidavit with the City Clerk and abstain from voting under the circumstances described in Section 171.004 of the Texas Local Government Code.
15. Section 2-1-24 of the City Code (Conflict of Interest and Recusal) states that at each meeting, a City board member shall sign the attendance sheet and shall indicate: (1) that the board member has no conflict of interest related to any item on the agenda, or (2) the number of an agenda item for which the board member has a conflict of interest.



16. In order to comply with the requirement of Section 2-7-64(B) of the City Code to publicly disclose in the official records of the body the nature and extent of a conflict of interest, a member of any City board, as defined in Chapter 2-1 of the City Code, shall comply with the requirements of Section 2-1-24 of the City Code.
17. The Historic Landmark Commission is a City board as defined in Chapter 2-1 of City Code, and its members must comply with the conflict of interest sign-in requirements of Section 2-1-24 of the City Code.
18. The Commission concludes that Respondent had a substantial interest in the real property located at 506 Lockhart Drive on July 27, 2015 and August 24, 2015, the dates of the Historic Landmark Commission meetings which are the subject of the Original Complaint and Supplement.
19. The Commission concludes that Respondent: (1) participated in voting and decision on the Bluebonnet Hills Historic District agenda item at the July 27, 2015 Historic Landmark Commission meeting, and (2) participated in decision on the Bluebonnet Hills Historic District agenda item at the August 24, 2015 Historic Landmark Commission meeting.
20. The Commission concludes that, at the time of the July 27, 2015 and August 24, 2015 Historic Landmark Commission meetings, the Bluebonnet Hills Historic District matter affected Respondent's substantial interest in his real property located at 506 Lockhart Drive because the proposed rezoning of Respondent's real property was reasonably likely to result in a direct economic effect or consequence, either positive or negative, on Respondent and/or his real property.




21. The Commission concludes that Respondent's interest in the Bluebonnet Hills Historic District matter was neither remote nor incidental, as defined in Section 2-7-2 of the City Code.
22. Accordingly, the Commission concludes that: (1) Respondent had a conflict of interest as described in Section 2-7-63 of the City Code with regard to the Bluebonnet Hills Historic District matter, and (2) Respondent violated Section 2-7-63 of City Code on July 27, 2015 and August 24, 2015, by participating in voting and/or decision on the Bluebonnet Hills Historic District agenda items.
23. The Commission concludes that, in accordance with Section 2-7-64 of the City Code, Respondent was required to disclose his conflict of interest by: (1) filing an affidavit with the City Clerk's Office prior to the vote or decision as required by Chapter 171 of the Texas Local Government Code, and/or (2) indicating his conflict of interest when signing the attendance sheet for the July 27, 2015 and August 24, 2015 Historic Landmark Commission meetings as required by Section 2-1-24 of the City Code.
24. Accordingly, the Commission concludes that Respondent violated Section 2-7-64 of City Code because Respondent had a prohibited conflict of interest but did not disclose his conflict of interest by either filing an affidavit with the City Clerk prior to the votes or decisions in question or indicating his conflict of interest when signing the attendance sheets for the July 27, 2015 and August 24, 2015 Historic Landmark Commission meetings.



IV. DETERMINATIONS OF THE ETHICS REVIEW COMMISSION

1. The Commission determines that Respondent violated Section 2-7-63(A), a provision within the jurisdiction of the Commission, by participating in voting or decisions on the Bluebonnet Hills Historic District matter at the July 27, 2015 and August 24, 2015 Historic Landmark Commission meetings.
2. The Commission further determines that Respondent violated Section 2-7-64(A) and (B), provisions within the jurisdiction of the Commission, by failing to properly disclose his conflict of interest regarding the Bluebonnet Hills Historic District matter as required by that section of the City Code with regard to the August 24, 2015 Historic Landmark Commission meeting.
3. The Commission determines that these violations were committed through disregard of Chapter 2-7 of the City Code.
4. The Commission determines that the appropriate sanction for Respondent's violations is a Reprimand under Section 2-7-48 of the City Code.

ORDERED as of this 27th day of October, 2015.


Dennis Speight
Commission Member, Ethics Review Commission

