

CITY OF AUSTIN ETHICS REVIEW COMMISSION

**CATHY MORGAN,
COMPLAINANT**

§
§
§
§
§
§
§

Complaint No. 20160830

v.

**AUSTIN COUNCIL MEMBER
DON ZIMMERMAN,
RESPONDENT**

ORDER ON FINAL HEARING

I. PROCEDURAL HISTORY

On August 30, 2016, Cathy Morgan (“Complainant”) submitted to the Austin City Clerk a Sworn Complaint (“the Complaint”) against Council Member Don Zimmerman (“Respondent”). The City Clerk sent a copy of the Complaint and a notice of filing to the City Attorney, the Ethics Review Commission (“the Commission”), the Complainant, and the Respondent.

On September 21, 2016, Commission Executive Staff Liaison and City of Austin Deputy City Attorney Deborah Thomas issued a Revised Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for October 12, 2016, and advising the Complainant and Respondent of the procedures for the Preliminary Hearing.

On October 12, 2016, the Commission conducted a Preliminary Hearing and determined that reasonable grounds existed to believe that a violation of Section 2-2-14(B) of the Austin City Code had occurred as alleged in the Complaint as a result of actions or omissions of Respondent. The Commission set this matter for a Final Hearing to be held on November 9, 2016.

On October 25, 2016, Jerikay Gayle, City of Austin Law Department, for Executive Liaison, Ethics Review Commission, issued a Notice of Final Hearing for November 9, 2016. The

October 25, 2016, Notice advised Complainant and Respondent of the procedures for the Final Hearing. Pursuant to Section 2-7-46 of the Austin City Code, the October 25, 2016, Notice requested the presence of both Complainant and Respondent at the Final Hearing. The October 25, 2016, Notice directed that any evidence to be submitted by the Complainant and Respondent be submitted no later than 5:00 p.m. on Friday, November 4, 2016.

The agenda for the November 9, 2016, meeting of the Commission and Final Hearing in this matter was timely posted.

On the date of the Final Hearing Respondent's counsel provided a letter advising the Commission that neither Respondent nor Respondent's counsel would attend the hearing, stating that there was no dispute as to the facts of the Complaint, and reasserting the positions previously stated by the Respondent as to why the Complaint should be dismissed.

II. FINDINGS OF FACT

- Complainant alleges that Respondent violated Section 2-2-14 (Disclosure of Compliance with Chapter), subsection (B), Austin City Code, by failing to include the disclosure statement required by that subsection.
- In the November 9, 2016, letter to the Commission, Respondent's attorney acknowledged that there was no dispute as to the facts of the case.
- The Respondent was a candidate, as defined by Austin City Code, for Austin City Council, District 6, during the period relevant to the Complaint.
- The communication at issue in the Complaint was political advertising, as defined by Austin City Code and the Texas Election Code.
- The Respondent did not sign a campaign contract under Section 2-2-11, Austin City Code (Voluntary Campaign Contract).

- The Respondent authorized the publication of the political advertising at issue in the Complaint.
- The political advertising at issue included the following statement:

"This campaign has not agreed to comply with the contribution and expenditure limits of the Austin **so-called "Fair"** Campaign Chapter" [emphasis added].
- Section 2-2-14(B), Austin City Code provides specific wording for the required disclosure statement, to-wit:

"This campaign has not agreed to comply with the contribution and expenditure limits of the Austin Fair Campaign Chapter"
- At the Final Hearing, the Complainant made verbal statements and responded to questions from the Commission.
- The Complainant acknowledged that she was not misled by the wording of Respondent's disclosure statement, but felt that the specific wording provided in the ordinance should have been used by the Respondent in his political advertising.

III. CONCLUSIONS OF LAW

- The November 9, 2016, meeting of the Commission and the Final Hearing were properly noticed in accordance with Chapter 2-7 of the Austin City Code, the Ethics and Financial Disclosure Ordinance, and the Texas Open Meetings Act.
- The Commission has jurisdiction over complaints alleging violations of Chapter 2-2 of the Austin City Code (The Austin Fair Campaign Chapter), Chapter 4-8 of the Austin City Code (Regulation of Lobbyists), Article III, Section 8 of the Austin City Charter, (Limits on Campaign Contributions and Expenditures), Chapter 2-7

of the Austin City Code (Ethics and Financial Disclosure), and Section 2-1-24 of the Austin City Code (Conflict of Interest and Recusal).

- The Complaint was filed with the City Clerk, was sworn to by Complainant, and identified the provisions of the Austin City Code alleged to have been violated, as required by Section 2-7-41 of the Austin City Code.
- The Complaint alleges a violation of Section 2-2-14(B) of the Austin City Code which provides:

(B) Except to the extent prohibited by the Federal Communications Act, a candidate who chooses not to sign a campaign contract shall include the following notice in all political advertising: "This campaign has not agreed to comply with the contribution and expenditure limits of the Austin Fair Campaign Chapter."

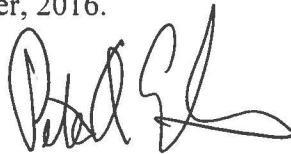
- Under Section 2-7-45 of the Austin City Code, the issue to be considered by the Commission at a Final Hearing is whether a violation of the cited section of the Austin City Code has occurred. The Commission shall make its final determination based on a preponderance of the credible evidence in the record.
- Title 2, Chapter 2-1, Section 2-1-6(B), Austin City Code provides:

A board action must be adopted by an affirmative vote of the number of members necessary to provide a quorum. For an 11 member board, a board action must be adopted by an affirmative vote of six board members.

IV. DETERMINATIONS OF THE ETHICS REVIEW COMMISSION

- A motion was made and seconded to find that the Respondent violated Section 2-2-14(B), Austin City Code, as alleged in the complaint. However, there was not an affirmative vote by six members of the Commission to find that the Respondent committed the alleged violation.
- The Commission orders that the complaint be dismissed.

ORDERED as of the 9th day of November, 2016.

A handwritten signature in black ink, appearing to read 'Peter Einhorn', written over a horizontal line.

Peter Einhorn
Chair, Ethics Review Commission