



ETHICS REVIEW COMMISSION

MEETING MINUTES

Wednesday, February 10, 2021

The Ethics Review Commission (“Commission”) convened in a regular meeting on Wednesday, February 10, 2021, Austin, Texas via Videoconference.

Chair Luis Soberon called the meeting to order at 6:05 p.m.

Commissioners in attendance: Chair Luis Soberon and Commissioners Debra Danburg, Betsy Greenberg, Donna Beth McCormick, Nathan Ryan, and Pedro A. Villalobos were present at the beginning of the meeting. Secretary Gober and Commissioner Mary Kahle joined the meeting by 6:10 p.m. Commissioner Raafia Lari joined the meeting during executive session. Vice-Chair J. Michael Ohueri and Commissioner Robin Lerner were absent.

City Staff in Attendance: Lynn Carter, Commission Executive Liaison & Assistant City Attorney and Sue Palmer, Staff Liaison, Law Department.

CITIZEN COMMUNICATION

Each person who signed up to speak prior to the meeting being called to order and who designated this item on which to speak, or who did not designate an agenda item on which to speak will be allowed three minutes to speak.

Donna Davidson registered to speak during citizen communication but was not present for the meeting. There were no other speakers for citizen communication.

3. NEW BUSINESS AND EXECUTIVE SESSION ON:

- (a) Evidentiary matters, including requests for records and/or witnesses in regard to the complaint(s) filed on October 13, 2020 by Mark Littlefield against Save Austin Now, which complaint alleges violations of City Code Chapter 2-2 (Campaign Finance) Sections 2-2-23 (Political Committees) and 2-2-26 (Filing Campaign Finance Report Data) of Chapter 2-2 (Campaign Finance).

Chair Soberon took up this item out of order. Chair Soberon informed the Commission of Respondent’s request for postponement due to a family emergency and Complainant’s agreement to postponement. Chair Soberon explained that the Commission rules do not provide a process for addressing requests for postponement outside of a meeting for this circumstance. Chair Soberon made a motion to postpone this item and the accompanying executive session item [item 1(a)], which was seconded by Commissioner Danburg.

The motion passed on a unanimous vote of 8-0 of the Commissioners present. Three members were absent. Voting in favor of the motion: Chair Soberon, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, McCormick, Ryan and Villalobos. Vice-Chair Ohueri and Commissioners Lari and Lerner were absent.

1. EXECUTIVE SESSION

The Ethics Review Commission may announce it will go into Executive Session pursuant to Chapter 551 of the Texas Government Code to receive advice from legal counsel on any matters specifically listed on this agenda (Private Consultation with Attorney-Section 551.071).

The Commission may go into executive session to discuss legal issues related to:

Complaints filed by Mark Littlefield against Peck Young, Voices of Austin, which complaints allege violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-33 (Disclosure Statement Required).

The Commission went into executive session at 6:18 p.m. and the open meeting resumed at 6:49 p.m.

3. NEW BUSINESS

Discussion and possible action regarding the following:

(b) Technology in the open meeting process.

Chair Soberon took up this item out of order to provide more time for a commissioner to join the meeting prior to the preliminary hearing. After discussion of the WebEx platform and alternative platforms, Commissioner Greenberg made a restated motion to recommend to Council, the City Clerk, and the IT Department that the City consider other online platforms that may serve as an alternative to WebEx in consideration of the issues the Commission has had in using WebEx. Commissioner McCormick seconded the motion, which passed by a vote of 8-1 with two members absent. Voting in favor of the motion: Chair Soberon, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, Lari, McCormick, and Ryan. Commissioner Villalobos voted against the motion. Vice-Chair Ohueri and Commissioner Lerner were absent.

2. PRELIMINARY HEARING

Discussion and possible action regarding the following:

- a. Complaints Littlefield filed by Mark Littlefield against Peck Young, Voices of Austin, which complaint alleges violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-33 (Disclosure Statement Required).

Parties appearing: Complainant Mark Littlefield and Attorney Roger Borgelt appeared on behalf of Respondent Peck Young and Voices of Austin.

After the conclusion of the preliminary hearing, Chair Soberon made a motion that the Commission find there are not reasonable grounds to believe a violation occurred as it relates to the automated phone call to Austin voters. The motion was seconded by Commissioner Danburg. The motion passed on a unanimous vote of the Commissioners present, a vote of 9-0 with two Commissioners absent. Voting in favor: Chair Soberon, Secretary Gober, and Commissioners Danburg, Greenberg,

Kahle, Lari, McCormick, Ryan, and Villalobos. Vice-Chair Ohueri and Commissioner Lerner were absent.

Commissioner Greenberg then made a motion to dismiss the second complaint about the mailer, which was seconded by Commissioner McCormick. The motion was discussed and then failed on a vote of 3-6 of the members present. Voting in favor of the motion: Commissioners Greenberg, McCormick, and Villalobos; voting against: Chair Soberon, Secretary Gober, and Commissioners Danburg, Kahle, Lari, and Ryan. Vice-Chair Ohueri and Commissioner Lerner were absent.

Commissioner Kahle made a restated motion to take the complaint about the mailer to a final hearing based on a finding that reasonable grounds exist to believe a violation within the Commission's jurisdiction had occurred. The motion was seconded by Commissioner Danburg, and the motion passed on a vote of 7-2 of the members present. Voting in favor: Chair Soberon, Secretary Gober, and Commissioners Danburg, Kahle, Lari, McCormick, and Ryan; voting against: Commissioners Greenberg and Villalobos. Vice-Chair Ohueri and Commissioner Lerner were absent.

The Commissioners then discussed the evidence to be presented at the final hearing and the parties were given an opportunity to state the evidence they intended to present; any evidence they desired to obtain; and any objections to requests for evidence. Respondent's counsel expressed concern about confidentiality of donor information in accordance with 501(c) status.

Chair Soberon made a motion that for purposes of the final hearing the Commission request: (1) that respondent not delete any public social media posts across any platforms the organization may be present on so the Commission may review those and so complainant may collect information and (2) respondent's redacted communications to donors, with any personal identifying information redacted. The motion was seconded by Commissioner Kahle, and the motion passed on the unanimous vote of the nine members in attendance. Voting in favor: Chair Soberon, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, Lari, McCormick, Ryan, and Villalobos. Vice-Chair Ohueri and Commissioner Lerner were absent.

3. NEW BUSINESS

Discussion and possible action regarding the following:

- (c) Recommendation of the Working Group on Race, Identity, and Equity (formerly the Equity Working Group): With the goal of helping to resolve systemic racism and inequity, informing the public of the Commission's role and responsibilities to ensure Austin citizens understand the ways the commission can serve them, including consideration of writing and publishing an opinion piece in local newspapers with wide circulation.

The working group provided an update on this item; no action was taken. Chair Soberon agreed to serve as an informal member of the working group.

4. OLD BUSINESS

Discussion and possible action regarding the following:

- a. Working group status reports and/or recommendations on the following.
 - Working group one (Vice-Chair Ohueri and Commissioners Greenberg and Lerner) on the following subjects:
 - Commission sanctions including effectiveness, past cases, and recommendations.
 - Potential amendments to City Code, Chapter 2-7 (Ethics and Financial Disclosure).
 - Working group two (Chair Soberon and Secretary Gober) on the following subjects:
 - Commission procedures including effectiveness, past cases, and recommendations.
 - Scope of work of the Commission (powers, duties, and obligations), including effectiveness, past cases, and recommendations.
 - Potential amendments to the Rules of the Ethics Review Commission.
 - Best practices for city attorney opinions including effectiveness, past cases, and recommendations.
- iii. Working Group on Race, Identity, and (Commissioners Kahle, Lari, and Ryan) status report and/or recommendations on: addressing issues of race, identity, and equity including: (i) planning for presentations or trainings by the Equity Office; (ii) helping focus the Commission's evaluation of racial injustice and how the Commission can operate more fairly and effectively in light of racial injustice.

Commissioner Greenberg renewed working group one's request for advice from the City Attorney's Office on the potential for civil fines as sanctions.

6. FUTURE AGENDA ITEMS AND ANNOUNCEMENTS

(a) Future agenda items

(b) Staff Liaison, Sue Palmer's retirement from the City of Austin after 30 years of service.

This item was taken out of order. The Chair announced that this meeting was the final meeting for Commissioner Ryan who would instead be serving on the Urban Transportation Commission. The Chair and Commission expressed their appreciation to Sue Palmer for her service as staff liaison to the Commission.

Future agenda items were discussed after consideration and vote on the minutes, item 5.

5. APPROVAL OF MINUTES: OCTOBER 14, 2020, NOVEMBER 18, 2020 AND JANUARY 13, 2021 REGULAR COMMISSION MEETINGS.

- (a) Discussion and possible action regarding the minutes for the October 14, 2020 regular commission meeting.
- (b) Discussion and possible action regarding the minutes for the November 18, 2020 regular commission meeting.

(c) Discussion and possible action regarding the minutes for the January 13, 2021 regular commission meeting.

Commissioner McCormick made a motion to approve both the October and November regular meeting minutes, which was seconded by Commission Gober. The motion passed on a unanimous vote of the members present; two members were absent. Voting in favor: Chair Soberon, Secretary Gober, and Commissioners Danburg, Greenberg, Kahle, Lari, McCormick, Ryan, and Villalobos. Vice-Chair Ohueri and Commissioner Lerner were absent.

No action was taken on the January 13 meeting minutes, which were not ready for review at the time of the meeting.

ADJOURNMENT

The meeting adjourned at 9:03 p.m.