CITY OF AUSTIN ETHICS REVIEW COMMISSION

STEFAN WRAY Complainant	§ § §	**Complaint No. 20140813**
v.	§ §	
SUSANA ALMANZA Respondent.	§ §	

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On August 13, 2014, Stefan Wray ("Complainant") submitted to the Austin City Clerk ("City Clerk") a Sworn Complaint ("the Complaint") against Susana Almanza ("Respondent"). On that date, 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 August 15, 2014, Commission Staff Liaison and Assistant City Attorney Cynthia Tom ("Tom") issued a Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for August 29, 2014, and advising the Respondent and Complainant of procedures for the preliminary hearing. On August 18, 2014, Tom issued a Revised Notice of Preliminary Hearing resetting the preliminary hearing to September 5, 2014.

On August 18, Respondent filed an Affidavit responding to the Complaint ("the Affidavit") with the City Clerk. Respondent attached to the Affidavit a copy of a "Correction/Amendment Affidavit for Candidate/Officeholder" (the "Correction Affidavit"),

file-stamped August 15, 2014, by the City Clerk. The Correction Affidavit added employer and occupation information for contributors of $200 or more shown on Schedule A of Respondent's earlier filed Form C/OH Candidate/Officeholder Campaign Finance Report ("Form C/OH").

In a cover letter dated August 18, 2014, that accompanied the Affidavit, counsel for Respondent stated that Respondent waived personal appearance at the preliminary hearing.

On August 19, 2014, Tom posted a Notice of Special Called Meeting and Agenda for the Commission for a September 5 Preliminary Hearing.

II. FINDINGS OF FACT

1. Respondent is a candidate for Austin City Council, District 3, in the City of Austin municipal election of November 4, 2014.
2. The City of Austin provides Form C/OH to municipal candidates as part of the City's Candidate Guide.
3. Respondent submitted a Form C/OH to the City Clerk on July 15, 2014. This submission covered the period from the appointment of Respondent's campaign treasurer, March 31, 2014, to June 30, 2014.
4. Respondent's July 15 Form C/OH disclosed contributions from 23 contributors in the amount of $200 or more.
5. Respondent's July 15 Form C/OH did not disclose the occupation or employer for the 23 contributors who contributed $200 or more.

6. Complainant alleges that Respondent violated Section 2-2-21(A) of the Austin City Code ("Section 2-2-21(A)") by submitting the July 15, 2014 Form C/OH without disclosing the required information on the occupation and employer of contributors who contributed $200 or more to Respondent.

7. On August 15, 2014, within two days of Complainant filing the Complaint, Respondent submitted the Correction Affidavit to the City Clerk. The Correction Affidavit disclosed the employer and occupation information for the 23 contributors of $200 or more who were listed on Respondent's July 15 Form C/OH.

8. In Respondent's August 18, 2014 Affidavit, she stated that omission of the employer/occupation information was an unintentional error, and described factors that she said contributed to the error.

III. CONCLUSIONS OF LAW

1. The September 5 Meeting of the Commission and Preliminary Hearing are properly noticed in accordance with Chapter 2-7 of the City Code, the Ethics and Financial Disclosure Ordinance ("Chapter 2-7"), and the Texas Open Meetings Act.

2. The Commission has jurisdiction over the Complaint pursuant to Section 2-7-26, Austin City Code, which provides that the Commission has jurisdiction over City Code Chapter 2-2 (*Campaign Finance*). The Commission has jurisdiction over the Respondent pursuant to Section 2-7-41, Austin City Code, which provides that the Commission shall consider possible violations by candidates for election to City offices.

3. Under Section 2-7-44 of the City Code, (Section 2-7-44) the Respondent is not required to attend or make any statement at a preliminary hearing. Complainant and Respondent were each afforded an opportunity to appear at the Preliminary Hearing in accordance with Chapter 2-7. Respondent waived personal appearance.

4. Under Section 2-7-44 of the City Code, the issue to be considered by the Commission at this preliminary hearing is the existence reasonable grounds to believe that a violation of Section 2-2-21(A) has occurred.

5. Under Section 2-7-44, at a preliminary hearing, the Commission may dismiss a complaint if it does not allege conduct which would be a violation of a provision within the jurisdiction of the Commission. The Commission may also decide whether a final hearing on the Complaint should be held.

6. In a preliminary hearing at which the Respondent agrees that a violation has occurred, the Commission may move directly to determinations that would otherwise be made during a Final Hearing conducted pursuant to Section 2-7-45

of the City Code, and may consider the appropriate sanction or prosecution pursuant to Section 2-7-47, Section 2-7-48, and/or Section 2-7-49 of the City Code.

7. Pursuant to Section 2-2-21(A), which is part of the Austin Fair Campaign Chapter ("The Fair Campaign Chapter"), a candidate in a City election must include on his or her contribution and expenditure reports the occupation and name of employer for all individual contributors of $200 or more.

8. A candidate's knowing failure to include information that the Fair Campaign Chapter requires to be included on a contribution and expenditure report is an offense under Section 2-2-5 of the City Code, subject to prosecution in the Municipal Court.

9. The Instructions Guide for Form C/OH is promulgated by the Texas Ethics Commission. The Instructions Guide does not specify whether municipal candidates must include information in Schedule A, blocks 9 and 10.

10. When the complaint before the Commission alleges a violation of the Fair Campaign Chapter, the Commission's potential sanctions and other actions are set out in Section 2-7-49 of the City Code ("Section 2-7-49").

11. Under Section 2-7-49, if the Commission determines that a violation of The Fair Campaign Chapter has occurred, the Commission may recommend that the City Attorney prosecute the violation, may request the appointment of a special prosecutor, or, if the Commission determines that the violation is minor, clerical,

or may have been unintentional, may recommend that the violation not be prosecuted or be prosecuted only if the violation is not corrected.

12. Under Section 2-7-49, the Commission is not required to make a recommendation with respect to a complaint.

13. Under Section 2-7-49, the Commission may also draft and publish a letter of notification, a letter of admonition, a reprimand, or a letter of censure to a respondent found to have violated a provision subject to Section 2-7-49. The provisions of Chapter 2-7 addressing the criteria for these remedies are set out at Section 2-7-48 of the City Code.

IV. DETERMINATIONS OF THE ETHICS REVIEW COMMISSION

1. The Commission determines that reasonable grounds exist to believe that a violation of Section 2-2-21(A) of the City Code occurred as a result of Respondent's failure to disclose employer and occupation information for 23 contributors included in Respondent's July 15, 2015 C/OH form.

2. The Commission determines that a violation of Section 2-2-21(A) has occurred.

V. SANCTIONS BY THE ETHICS REVIEW COMMISSION

1. The Commission recommends that the violation not be prosecuted.

2. The Commission issues the following sanction in accordance with Section 2-7-48 and 2-7-49(F): a reprimand based on a finding of disregard of Chapter 2-2.

ORDERED this 5th day of September, 2014.

Austin Kaplan
Chair, Ethics Review Commission