

**CITY OF AUSTIN ETHICS REVIEW COMMISSION**

<b>Juan M. Penelas</b>	§	
Complainant	§	
	§	<b>Complaint No. 20181010</b>
v.	§	
	§	
<b>James Duncan</b>	§	
Respondent	§	

**ORDER ON PRELIMINARY HEARING**

**I. PROCEDURAL HISTORY**

On October 10, 2018, Mr. Juan M. Penelas (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a Sworn Complaint (“the Complaint”) against Mr. James Duncan (“Respondent”). On October 10, 2018, the City Clerk sent a copy of the Complaint and a notice of filing to the City Attorney, Chair of the Ethics Review Commission (“the Commission”), Complainant, and Respondent.

Complainant alleged that Respondent violated Austin City Code Section 2-1-24 on October 2, 2018, by failing to recuse himself from participating in a vote on the City commission on which he was a member. Complainant further alleged that on October 2, 2018, Respondent failed to disclose a conflict of interest in regard to Zoning and Platting Commission agenda item 11, C814-86-023.01, Camelback Application for PUD, by failing to indicate ownership of property (valued in excess of \$5,000) that was allegedly adjacent to the Camelback tract.

On November 28, 2018, a Notice of Preliminary Hearing was issued setting a preliminary hearing of the Commission for December 12, 2018, and advising Complainant and Respondent of the procedures for the preliminary hearing.

**II. FINDINGS OF FACT**

1. Respondent is a member of the City of Austin Zoning and Platting Commission.

2. Complainant and Respondent were each afforded an opportunity to appear at the Preliminary Hearing in accordance with City Code Chapter 2-7 and the Rules of the Commission. Complainant appeared in person. Respondent and his attorney appeared in person.

### **III. CONCLUSIONS OF LAW**

1. The December 12, 2018, meeting of the Commission and the Preliminary Hearing were properly noticed in accordance with Chapter 2-7 of the Austin City Code and the Texas Open Meetings Act.

2. Pursuant to Section 2-7-26 of Chapter 2-7 (Ethics and Financial Disclosure) of the Austin City Code, the Commission has jurisdiction over complaints alleging violations of City Code Section 2-1-24 (Conflict of Interest and Recusal).

3. The Complaint was filed with the City Clerk, sworn to by Complainant, and identified the section of the Austin City Code alleged to have been violated, as required by Section 2-7-41 of the City Code.

4. The agenda for the December 12, 2018, meeting of the Commission and Preliminary Hearing in this matter was timely posted on December 6, 2018.

5. City Code Section 2-1-24 reads in relevant part:

- (A) This section is cumulative of Chapter 2-7 (Ethics and Financial Disclosure) and Local Government Code Chapter 171 (Regulation of Conflicts of Interest of Officers of Municipalities, . . . and . . . Other Local Governments). Under this section a board member has a conflict of interest if the City Code or another law prohibits the board member from taking action on a vote or decision before the board.
- (B) At each meeting, a board member shall sign an 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.

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- (D) Failure by a member to comply with Subsection (B) will result in that member being counted as absent from the board meeting; such an absence is an unexcused absence. Any vote or votes cast by a member who fails to comply with Subsections (B) or (C) will not be counted at the board or committee meeting at issue.
- (E) Chapter 2-7, Article 3 (Violation: Complaint and Hearing Procedures) applies to this section, and a sworn complaint alleging a violation may be filed under the procedures of that article. If the Ethics Review Commission determines that a violation of this section has occurred, it shall follow the procedure required by Section 2-7-47 (Prosecution).

6. Under City Code Section 2-7-44(A), the issue to be determined by the Commission at a preliminary hearing is the existence of reasonable grounds to believe that a violation of a provision within the Commission's jurisdiction has occurred.

7. Under City Code Section 2-7-44(C), if the commission does not determine that there are reasonable grounds to believe that a violation has occurred, the complaint is dismissed.

#### **IV. DETERMINATION OF THE ETHICS REVIEW COMMISSION**

At the conclusion of the preliminary hearing, a motion was made and seconded that reasonable grounds exist to find that Respondent violated City Code Section 2-1-24. The motion failed based on the lack of six votes in favor of the motion.

Pursuant to City Code Section 2-7-44(C), the Commission orders that the complaint be dismissed.

**ORDERED as of the 12th day of December, 2018.**



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Ben Stratmann  
Chair, Ethics Review Commission