



## **ETHICS REVIEW COMMISSION**

## **MEETING MINUTES Wednesday, June 9, 2021**

The Ethics Review Commission (“Commission”) convened in a regular meeting on Wednesday, June 9, 2021, Austin, Texas via Videoconference.

Chair Luis Soberon called the meeting to order at 6:06 p.m.

Commissioners in attendance: Chair Luis Soberon, Secretary Robin Lerner, and Commissioners Debra Danburg, Betsy Greenberg, Mary Kahle, Michael Lovins, Donna Beth McCormick, Nguyen Stanton, and Mikki Teneyuca. Vice-Chair J. Michael Ohueri and Commissioner Raafia Lari were absent.

City Staff in Attendance: Lynn Carter, Commission Executive Liaison & Assistant City Attorney; Meredith Mooney, Executive Assistant, 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.

**Three speakers registered to speak. Olivia Overturf spoke on agenda item 4; Tiffany Washington spoke on item 6; and Zenobia Joseph spoke on an issue not on the agenda.**

### **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:

- (a) A complaint filed by Joseph Cascino against Otto Swingler, which complaint alleges violations of City Code Chapter 2-2 (Campaign Finance) Sections 2-2-23 and 2-2-26.
- (b) Complaints filed by Mark Littlefield against Save Austin Now, which complaint alleges violations of City Code Chapter 2-2 (Campaign Finance) Sections 2-2-23 and 2-2-26.
- (c) A complaint filed by Olivia Overturf on May 17, 2021, against Mayor Pro Tem Natasha Harper-Madison, which complaint alleges violation of City Code Sections 2-2-1(B) and (E), Sections 2-7-62(B), 2-7-1(A), and 2-7-1(B)(1) and (B)(2); and which complaint also references Code Sections 2-1-44(A) and 2-1-48(A) and (C).

**The Commission went into executive session at 6:30 p.m. and the open meeting resumed at 8:03 p.m.**

## **2. PRELIMINARY HEARING**

Discussion and possible action regarding the following:

A complaint filed by Joseph Cascino against Otto Swingler, 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).

**Parties Attending: Complainant Joseph Cascino appeared; attorney for Respondent, Eric Opiela, and Respondent Otto Swingler appeared.**

**The parties had an opportunity to make presentations during the preliminary hearing, and the Commission asked questions to the parties.**

**Commissioner Lovins made a motion to dismiss the complaint because there are not reasonable grounds to believe a violation occurred. The motion was seconded by Commissioner Stanton.**

**Chair Soberon made a motion to table the motion to dismiss for the purpose of the 10:00 p.m. rule, which was seconded by Commissioner Lovins. The motion to table passed on a unanimous vote (9-0) of the members present. Voting in favor: Chair Soberon, Secretary Lerner, and Commissioners: Danburg, Greenberg, Kahle, Lovins, McCormick, Stanton, and Teneyuca. Vice-Chair Ohueri and Commissioner Lari were absent.**

**Chair Soberon then made a motion for the meeting to proceed past 10:00 p.m., which was seconded by Commissioner Kahle. The motion passed on a vote of 8-1. Voting in favor: Chair Soberon, Secretary Lerner, and Commissioners: Greenberg, Kahle, Lovins, McCormick, Stanton, and Teneyuca. Voting against: Commissioner Danburg. Vice-Chair Ohueri and Commissioner Lari were absent.**

**At approximately 9:56 p.m., Commissioner Lovins reintroduced his motion to dismiss because there are not reasonable grounds to believe a violation within the jurisdiction of the Commission occurred. Commissioner Stanton seconded the motion. After discussion, the motion failed on a vote of 4-5. Voting in favor: Commissioners Danburg, Kahle, Lovins, and McCormick. Voting against: Chair Soberon, Secretary Lerner, and Commissioners Greenberg, Stanton, and Teneyuca. Vice-Chair Ohueri and Commissioner Lari were absent.**

**Commissioner Greenberg made a motion to proceed to a final hearing because there are reasonable grounds to find that a violation within the jurisdiction of the Commission may have occurred, which was seconded by Commissioner Teneyuca. The motion passed on a vote of 6-3. Voting in favor: Chair Soberon, Secretary Lerner, and Commissioners Danburg, Greenberg, Stanton, and Teneyuca. Voting against: Commissioners Kahle, Lovins, and McCormick. Vice-Chair Ohueri and Commissioner Lari were absent.**

**The Commission then considered requests for evidence by the parties and the Commission.**

**Chair Soberon made a motion to request the following documentary evidence from the parties for purposes of the final hearing:**

**Complainant Cascino:**

- **Provide the screenshots described;**
- **Provide the campaign finance reports that are relevant to the complaint;**
- **Provide the relevant provisions of the Go Fund Me terms of the service agreement on the Go Fund Me page;**
- **make a good faith effort to find a cached or historical copy of the Go Fund Me pages that existed while it was live and receiving donations.**

**Respondent Swingler:**

- **Provide the spreadsheet, the information about the donors that was given to Save Austin Now, as it was given to Save Austin Now;**
- **Provide any kind of receipt or email confirmation from Go Fund Me that shows the amount given to you as a result of your fundraising campaign.**

**The motion was seconded by Commissioner Lovins. The motion passed on a unanimous vote of the Commissioners present (9-0). Voting in favor: Chair Soberon, Secretary Lerner, and Commissioners: Danburg, Greenberg, Kahle, Lovins, McCormick, Stanton, and Teneyuca. Vice-Chair Ohueri and Commissioner Lari were absent.**

### **3. FINAL HEARING**

Discussion and possible action regarding the following:

The complaint(s) filed on October 13, 2020 by Mark Littlefield against Save Austin Now, which allege 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).

**Complainant Mark Littlefield appeared; Donna Garcia Davidson and Chris Gober appeared as counsel for Respondent Save Austin Now.**

**Commissioner Danburg was excused from the meeting.**

**The parties presented to the Commission the terms of an executed settlement agreement and release entered between the parties, and Complainant announced his withdrawal of his complaint as part of the agreement.**

**Commissioner Stanton made a motion to dismiss the complaint because the Complainant has withdrawn the complaint, which was seconded by Commissioner Lovins. The motion passed on a vote of 7-0-1. Voting in favor: Chair Soberon, Secretary Lerner, and Commissioners Kahle, Lovins, McCormick, Stanton, and Teneyuca. Commissioner Greenberg abstained. Vice-Chair Ohueri and Commissioners Danburg and Lari were absent.**

**At approximately 11:37 there was a short loss of connection for the virtual meeting. At approximately 11:39 p.m., the meeting proceeded with a quorum present.**

#### **4. REVIEW OF JURISDICTIONAL DETERMINATION**

Discussion and possible action regarding the following:

The initial determination that the Commission lacks jurisdiction over: A complaint filed by Olivia Overturf on May 17, 2021 against Mayor Pro Tem Natasha Harper-Madison, which complaint alleges violations of City Code Chapter 2-2 (Campaign Finance), Subsections (B) and (E) of Section 2-2-1 (Declaration of Policy and Legislative Findings); Chapter 2-7 (Ethics and Financial Disclosure), Sections 2-7-62(B), 2-7-1(A), and 2-7-1(B)(1) and (B)(2); and which complaint also references Code Sections 2-1-44(A) and 2-1-48(A) and (C).

**Commissioner Stanton made a motion to overturn the initial jurisdictional determination that the Commission lacks jurisdiction over the complaint, but there was no second for the motion. No further action was taken by the Commission on this item. Therefore, the initial jurisdictional determination stands.**

**Chair Soberon then made a motion to postpone the remaining items on the agenda until the next regularly scheduled meeting, which was seconded by Secretary Lerner. The motion passed on the favorable vote of at least 7 members. Voting in favor: Chair Soberon, Secretary Lerner, and Commissioners: Kahle, Lovins, McCormick, Stanton, and Teneyuca. Commissioner Greenberg's vote was not recorded. Vice-Chair Ohueri and Commissioners Danburg and Lari were absent.**

#### **5. NEW BUSINESS**

Discussion and possible action regarding the following:

- (a) Draft Op-Ed by the Working Group on Race, Identity, and Equity
- (b) Draft Commission Statement on Equity, Access, and the Need for Reform by the Working Group on Race, Identity, and Equity

**This item was postponed until the next regular meeting of the Commission.**

#### **6. OLD BUSINESS**

Discussion and possible action regarding the following:

- a. Working group status reports and/or recommendations on the following.
  - i. Working Group on Sanctions, Procedures, and other Issues (Chair Soberon, Vice-Chair Ohueri, and Commissioners Greenberg, Lerner, and Stanton) on the following subjects:
    - Commission sanctions including effectiveness, past cases, and recommendations.
    - Potential amendments to City Code, Chapter 2-7 (Ethics and Financial Disclosure).
    - 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.
- ii. Working Group on Race, Identity, and Equity (Commissioners Kahle, Lari, and Soberon) 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.

**This item was postponed until the next regular meeting of the Commission.**

**7. APPROVAL OF MINUTES: APRIL 14, 2020 AND MAY 12, 2020 REGULAR COMMISSION MEETINGS.**

Discussion and possible action regarding the minutes for:

- (a) the April 14, 2021 regular commission meeting and
- (b) the May 12, 2021 regular commission meeting.

**This item was postponed until the next regular meeting of the Commission.**

**8. FUTURE AGENDA ITEMS**

**This item was postponed until the next regular meeting of the Commission.**

**ADJOURNMENT**

**The meeting adjourned at 12:18 a.m. on June 10, 2021.**