



## **HUMAN RIGHTS COMMISSION**

### **MEETING MINUTES**

#### **REGULAR MEETING**

**Monday November 28, 2011**

**City Hall Council Chambers & Room 1027**

**First Floor, 301 W. Second Street, Austin, TX 78701**

Chair Tom Davis called the Board Meeting to order at 5:32 p.m.

#### **Board Members in Attendance:**

Tom Davis, Chair  
Paul Rhea, Vice Chair  
Elizabeth Brenner  
DeWayne Lofton  
Delia Meyer  
George Reynolds

#### **Human Resources Staff Present:**

Yamile M. Ortiz, EE/FHO Staff Liaison  
Tony Robertson, EE/FHO Executive Liaison

#### **1. CITIZENS COMMUNICATIONS**

None

#### **2. APPROVAL OF MINUTES**

The minutes from the meeting of November 23, 2011 were approved; Commissioner Reynolds motion, Commissioner Meyer second on a 5-0 vote.

#### **3. NEW BUSINESS**

- a. Presentation by Richard Shultz about how Austin's current mass transit system discriminates against lower-income people; and a proposal to make it less discriminatory and more responsive

Mr. Shultz discussed and presented a PowerPoint presentation on Cellular Mass Transit. Mr. Shultz talked about how public transit fails the working class people in Austin; the system is too slow, lines are long, and transfer conditions are poor. He stated that the public current transit policy is racist; rich whites can easily afford cars and they would rather spend on wide roads and large parking lots. Public transit reaches only 41% of low wage jobs in Austin and poor minorities are more dependent on public transit. He mentioned City Council wants to spend \$1.3 billion for urban rail.

Mr. Schultz discussed the poverty level by race, low income residential zip code groups, low work density areas in different areas of the city, and employment by zip code. Mr.

Schultz explained the City can do better with Cellular Mass Transit Centers and will improve the public transit. Also the Bus Rapid Transit is the cheaper way to reach more jobs and increase ridership. This system will reduce travel time by half, cut wait times, provide shelter and security at transfer points, and increase the number of wage earners reached.

Mr. Schultz emphasized working people will be able to use public transit to get from home to job across the city in a reasonable amount of time. Mr. Schultz showed various graphics with the city's routes, transit centers, bus (Express line), taxi share, and van pool information. He mentioned other cities such as Atlantic City, Portland, and Honolulu. In some states like Florida, California and other countries such as Peru, Turkey, South Africa, and Philippines have successfully improved their transit system with Cellular Mass Transit, Bus Rapid Transit, and Share Taxi.

Mr. Schultz explained that he spoke with the board members of Capital Metro and members of CAMPO (Capital Area Metropolitan Planning Organization) but there was no reaction or response. He also spoke with four City of Austin Council Members with no opinion. He added that the calculated cost for the Cellular Mass Transit System is \$180 million versus cost of Urban Rail which is \$1.3 billion.

- b. Update by Karen Gross of the Anti-Defamation League on the activities of the Austin Hate Crimes Task Force.

Tabled

- c. Presentation by Judge Herb Evans and/or Judge Leonard Saenz about the Judicial Support Task Force, which has been working on the Youth Court and Student Rights to Education Initiative.

Tabled

#### **4. OLD BUSINESS**

- a. Discussion on the Annual Work Plan Objectives:

- Single message that educates and informs the public to the purpose, vision, and commitment of the Human Rights Commission.

Commissioner Reynolds previously did a draft of the Commission's Mission statement and distributed to the Commissioners for their review. He stated the objective of the statement is to do a synopsis of the purpose and function of the Commission. Commissioner Brenner suggested bringing this statement to the January 23, 2012, meeting to have more time to review it; Commissioners agreed.

- Marketing Plan which identifies which issues, people, commissions, and organizations the Human Rights Commission should be targeting in educating and informing the community on the purpose and mission of the Commission.

Commissioners suggested doing a marketing plan after the Mission Statement is completed. Commissioner Davis brought up the idea to contact some minority newspapers in town; two Hispanics newspapers: *El Mundo* and *Ahora Si*; and two Black newspapers: *Nokoa the Observer* and *The Villager*. He suggested that the Commissioners volunteer to do an initial point of contact with these groups to see if

they can be used as a channel to send information to the public about the Commission to see what they can do for us. Commissioner Rhea suggested contacting the Asian Newspaper, *Austin South Asian*, as well. Some Commissioners offered to do the tasks and they will bring follow up information during the January meeting.

## **5. FUTURE AGENDA ITEMS**

Discussion of possible agenda items for the next regular HRC meeting.

- Commissioner Davis said they will continue discussion on the Annual Work Plan Objectives.
- Commissioner Meyer and Davis talked about bringing some one to talk about Occupy Austin. Commissioners agreed to discuss this subject on the next agenda in January 2012.

## **6. HEARING PER CITY CODE 5-3-10**

Sabrina Brown vs. Empowerment Options, Inc

Tony Robertson: from the Equal Employment Fair Housing Office Human Resources Department facilitated the hearing. Mr. Robertson mentioned that each Commissioner received and reviewed a packet of information about the issues of the hearing. Mr. Robertson explained the hearing process before the Commission proceeds and an overview of the charge for consideration. He explained the process of the opening statement; a brief uninterrupted presentation from each party, and the closing statement from each party.

Mr. Robertson explained in detail the charge for considering and the hearing process. He read the City Code Chapter 5-3-10 - "Review of no reasonable cause determination by Commission" Mr. Robertson reviewed a charge of discrimination from Ms. Sabrina Brown in which she believes she was discriminated against based on her gender identity. The City of Austin Equal Employment/Fair Housing Office (EE/FHO) determined there was not reasonable cause to show that discrimination occurred and issued a no cause finding.

City Code allows Ms. Brown to appeal the decision of the EE/FHO decision to the Commission for reconsideration. The Commission was provided a chance to affirm, reverse, or modify the EE/FHO's determination. The Commission will base their determination only on the information presented during the hearing and have the opportunity to ask questions after both parties make their presentation and exhibits.

### Opening Statements:

Ms. Michelle Bohreer: Attorney for Empowerment Options, Inc - Respondent.

Ms. Bohreer mentioned Ms Brown filed a charge of discrimination on August 8, 2011 under City of Austin Ordinance Chapter 5-3, alleging she was discriminated against based on her gender identity. Ms. Bohreer stated the respondent denied the discrimination allegations from Ms. Brown. Ms. Bohreer stated Ms. Brown was employed by respondent as a House Manager from May 19, 2011 until June 14, 2011, the date of her resignation. Ms. Bohreer stated that Ms. Brown was not constructively discharged.

Ms. Bohreer stated Ms Brown alleged that on May 26, 2011, Sherilyn Elliott the Service Manager talked with other staff regarding Ms. Brown's gender identity. Ms Brown did not

allege that any adverse action was taken against her from the respondent, but the gossiping created a hostile working environment because other staff knew about Ms. Brown's gender identity (that she previously was a man and now presents as a woman). Ms. Bohreer mentioned Ms. Brown did not inform respondent of any discriminatory conduct while employed with the respondent and Ms. Brown did not meet or requested to meet with respondent's Regional Director Ms Marlene Wozniczka on June 1, 2011.

Ms. Bohreer states that in support of her complaint, Ms. Brown presented a handwritten statement from a witness - coworker Barbara Fletcher - to the Respondent's staff on or about June 1, 2011. Ms. Bohreer said Ms. Wozniczka and Ms. Brown meet on June 3, 2011 to review a new hire employee survey and fill out a Direct Care Monitoring and Weekend Monitoring Report but Ms. Brown did not identify any problems or issues at that time. Ms. Bohreer stated Respondent provided Ms. Brown with a Human Resources Policies and Procedures Manual, which includes the employee grievance procedure utilized by Respondent. Although she signed the Employee Handbook Signature page acknowledging that she read and understood the policies. Ms. Brown did not utilize the Employee Grievance Procedure during or after her employment with Respondent.

Ms. Bohreer stated that on June 13, 2011, during a conversation with the Human Resources Manager - Ms. Jackson - Ms. Brown expressed frustration. Her supervisor asked her what was going on, and Ms. Brown did not provide details regarding the cause of her frustration. Ms. Brown said Ms. Sherilyn Elliott was very helpful and asked if they could meet the following day. Ms. Brown agreed to meet with her supervisor Ms. Sherilyn Elliot the following day.

On June 14, 2011, Ms. Brown's supervisor asked her to meet with her and Ms. Wozniczka to discuss her concerns. Ms. Brown agreed to meet with the supervisor and Ms. Wozniczka the Regional Director and stated that she wanted to take a couple of minutes to calm down, and that she was going to the bathroom. Ms. Brown did not return to Ms. Wozniczka the Regional Director's office, later they found out Ms. Brown had left the building.

Ms. Bohreer emphasize the legal insufficiency of Ms. Brown's claims by noting that she has not met the prima facie burden of proof, nor has she alleged an adverse employment action.

Ms. Sabrina Brown: Charging Party.

Ms Brown stated she was discriminated against because of her gender identity. In support of her complaint, Charging Party alleged that she notified the Director on 06/01/2011 of issues on the homes and talks about her gender, but that nothing was ever done. Ms Brown said that her coworker Ms. Fletcher had presented a written statement form and delivered it to the respondent's staff. Ms Brown mentioned that the respondent said they did a swift investigation; but it was not true, that investigation was not done.

Ms Brown said if they did an investigation how come she did not know about it, they never called her to ask questions. She re-affirmed that in that letter many of the names of the staff who were in the letter Ms. Fletcher provided to the respondent, which indicated those employees were talking about her gender. Ms. Brown said to the respondent: you are the Human Resources Manager, the Regional Director of the company, I am an employee and you have more resources to use in an investigation, but you failed to do that. Ms. Brown asked where the copy of the investigation is, she said the respondent did not have it; this was

a cover up. Ms. Brown addressed to the Commissioners what they would do if they were in charge. She ended saying she will leave this determination in your hands.

Mr. Robertson explained after both parties presented their opening statements to the Commission, they had the opportunity for clarification and asked questions of each party. Respondent informed the Commissioners they have two witnesses present in the hearing. Mr. Robertson informed the Commissioners of the staff member who investigated this case was also present.

#### Closing Statements:

Ms. Bohreer: stated there was no evidence to support Ms. Brown's allegations of discriminatory actions. Ms. Bohreer affirmed the respondent has provided evidence during Ms. Brown's employment and post-employment regarding respondent's efforts to reach out to Ms. Brown. Ms. Bohreer said after she abandoned her job they finally met on June 24, 2011 to express her concerns.

Ms. Bohreer's closing statement emphasized the legal insufficiency of Ms. Brown's claims by noting that she has not met the prima facie burden of proof, nor has she alleged an adverse employment action. Ms. Brown said Ms. Sherilyn Elliott was very helpful, Ms. Brown did not have enough evidence to prove her allegation was a discriminatory case and she did not suffer an adverse employment action, but instead removed herself from the workplace. Ms. Bohreer asked the Commissioners to affirm this decision.

Ms. Brown: mentioned the City Code Chapter 5-3 Discrimination in Employment Generally; the respondent did not follow proper procedures in the investigation they said they did. There is no copy of an investigation and Ms. Brown said Ms. Fletcher spoke the truth, that's why we are here. She informed the respondent of the issues in a timely manner. Ms. Brown said if that is not enough information to say that there was discrimination, harassment and bullying in the work place, she did not know what else needed to be done.

Ms. Brown admitted the respondent talked with her for over an hour to question her about work related issues. Respondent never addressed her complaint of discrimination of her gender identity; the respondent was informed about it because they got the letter of another employee Ms. Fletcher reporting the situation to the respondent. Ms. Brown asked the Commissioners to see all this information, and the respondent provided.

Mr. Robertson: stated that both parties had concluded their presentations, and provided the Commissioners an opportunity to discuss among themselves on whether they would vote to affirm, reverse, or modify the EE/FHO's determination.

Mr. Robertson explained if Commissioners disagree with EE/FHO's decision then the process will return to staff for an informal resolution process and the case will be submitted to the City Attorney for appropriate prosecution.

Commissioners' determination in open session was as follows:

- Commissioner Reynolds voted Reverse,
- Commissioner Brenner voted Affirm
- Commissioner Meyer voted Reverse,
- Commissioner Davis voted Affirm

- Commissioner Rhea voted Reverse
- Commissioner Lofton voted Affirm

The final vote was 3 to Affirm. - 3 to Reverse.

Ms. Romero: from the City of Austin Attorney's Office clarified and explained some issues regarding the determination. Ms. Romero clarified that the 3-3 tied vote does not allow a decision to be made so staff determination stands. Commissioner Reynolds asked to clarify which determination prevails since a determination was not made. Ms Romero explained that we cannot reconsider the vote. The Administration Procedures Act says the vote can be amended. Under Robert's Rules the motion can be moved. Commissioner Reynolds confirmed in order to do the motion this can be done for some one who votes to Affirm.

Commissioner Lofton made a motion to reconsider the original vote, Commissioner Meyer second on a vote of 4 - 1 - 1. Commissioner Brenner asked if they can ask questions. Commissioner Reynolds said the Commission has adopted bylaws, which is why the Commission stands by Robert's Rules. Ms. Romero confirmed we are all trying to reconcile the direction of the different sources of guidance, it is reasonable to look to Robert's Rules because it is part of the Commission's bylaws, Chapter 2-1, the recommendation stands. Ms. Romero clarified if the Commissioners will reconsider the vote, Commissioners can ask more questions.

Commissioner Lofton asked the respondent's counselor if there is any room for reconciliation on this case or is the respondent's position that is not discrimination. Respondent's counselor responded they made many attempts to meet with her but she was not available. Her only request was to ask for money and the company denied that request. Commissioner Lofton asked Ms. Brown what she is looking to get out of this process. Ms. Brown responded a year's salary equivalent to the amount of \$26,000.00.

Commissioner Davis asked Commissioners if there where any more questions, they answered no. Commissioner Meyer moved to take the vote, Commissioner Brenner second on a 6-0 vote. Commissioner Davis asked Commissioners if they where ready to vote; he said the motion was on the floor.

Commissioner Davis asked all in favor of Affirming: there were two votes

- Commissioner Brenner voted Affirm
- Commissioner Davis voted Affirm

Commissioner Davis asked all in favor of Reversing: there were four votes

- Commissioner Reynolds voted Reverse,
- Commissioner Meyer voted Reverse,
- Commissioner Rhea voted Reverse
- Commissioner Lofton voted Reverse (Commissioner Lofton retracted his vote after he questioned both parties)

Commissioner Davis mentioned the next process after this determination will be the conciliation proceedings. Commissioner Davis asked if any one wanted to make comments. Commissioners agreed there is still room for improvement and there needs to be a consistent set of rules to operate, and that this needs to be corrected in the near future. The Executives involve in this process will take care to fix this process.

Before the Commission adjourned Commissioner Davis apologized to Ms. Scales and the Commissioners because he overlooked the Old Business section b. - Regarding an anonymous letter of concern referring allegations of discrimination against the City of Austin Parks and Recreation Department. Commissioner Davis was informed by Ms. Scales who said the investigation is still ongoing, and she will address this matter in the January meeting.

**ADJOURN**

Chair Tom Davis adjourned the meeting at 9:45 pm without objection.