

CITY OF AUSTIN ETHICS REVIEW COMMISSION

GLORIA MORALES

Complainant

v.

MONICA A. GUZMÁN

Respondent.

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**Complaint No. 20140829
(Amended)**

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On August 29, 2014, Gloria Morales (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a Sworn Complaint (“the Complaint”) against Monica Guzmán (“Respondent”). On September 3, 2014, 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 September 11, 2014, Commission Staff Liaison and City of Austin Assistant City Attorney Cynthia Tom (“Tom”) issued a Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for September 22, 2014 and advising the Respondent and Complainant of procedures for the preliminary hearing. On September 12, 2014, Tom issued a Revised Notice of Preliminary Hearing resetting the preliminary hearing to September 23, 2014.

On September 19, 2014, Tom posted a Notice of Special Called Meeting and Agenda for the Commission for a September 23 Preliminary Hearing.



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On September 23, 2014, the Commission conducted a Preliminary Hearing on the Complaint and entered an Order dismissing the Complaint. The Order afforded Complainant ten (10) business days to revise and resubmit the Complaint.

On October 2, 2014, Complainant submitted an Amended Sworn Complaint (“the Amended Complaint”) to the City Clerk. On October 2, the City Clerk provided a copy of the Amended Complaint to the Respondent, The Commission, and the City Attorney.

On October 16, 2014, Tom issued a Notice of Preliminary Hearing setting a Preliminary Hearing on the Amended Complaint for October 20, 2014.

On October 17, 2014, Tom posted a Notice of Special Called Meeting and Agenda for the Commission for an October 20 Preliminary Hearing.

II. FINDINGS OF FACT

1. Respondent is a candidate for Austin City Council, District 4, in the City of Austin municipal election of November 4, 2014.
2. Complainant alleges that Respondent entered into a “voluntary campaign contract” under Section 2-2-11 of the Austin City Code (“Section 2-2-11”) on August 21, 2014, after the deadline to do so established by Section 2-2-11, which Complainant alleges to have been August 18, 2014.
3. Complainant alleges that Respondent has not been a resident of District 4, the City Council district in which she is a candidate, for the six month time period required under Article II, Section 2 of the Austin City Charter.



III. CONCLUSIONS OF LAW

1. The October 20 Meeting of the Commission and the 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 complaints alleging violations of Chapter 2-2 of the City Code (Campaign Finance), Chapter 4-8 of the City Code (Regulation of Lobbyists), Article III, Section 8 of the City Charter, (Limits on Campaign Contributions and Expenditures), Chapter 2-7 of the City Code (Ethics and Financial Disclosure), and Section 2-1-24 of the City Code (Conflict of Interest and Recusal), and Section 2-1-24 of the City Code (Conflict of Interest and Recusal).
3. The Commission does not have general jurisdiction over allegations of violations of other parts of the City Code and City Charter.
4. 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.
5. Under Section 2-7-44 of the City Code, the issue to be considered by the Commission at a preliminary hearing is the existence reasonable grounds to



believe that a violation of a provision within the jurisdiction of the Commission has occurred.

6. Under Section 2-7-44, at any time during 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.
7. If the allegations in the complaint concern acts or omissions which are wholly outside the jurisdiction of the Commission, the complaint may be dismissed without affording an opportunity that it be revised and resubmitted.
8. If the allegations in the complaint concern provisions that are within the jurisdiction of the Commission, but the complaint does not allege conduct which would be a violation of those provisions, then the complainant shall be afforded one opportunity to revise and resubmit the complaint.
9. Complainant has already been afforded one opportunity to amend her original Complaint.

IV. DETERMINATIONS OF THE ETHICS REVIEW COMMISSION

1. The Commission determines that reasonable grounds do not exist to believe that a violation of a provision within the jurisdiction of the Commission has occurred as a result of the actions or omissions alleged in the Complaint with respect to the Respondent's entering into a Voluntary Campaign Contract.




2. The Commission determines that reasonable grounds do not exist to believe that a violation of a provision within the jurisdiction of the Commission has occurred as a result of the actions or omissions alleged in the Complaint with respect to the residency allegation.

V. REFERRAL/NON-REFERRAL TO FINAL HEARING

1. The Commission will not set the Complaint for final hearing with respect to the Voluntary Campaign Contract allegation and/or the residency allegation.
2. The Complaint is DISMISSED.

ORDERED as of the 20th day of October, 2014.



Austin Kaplan
Chair, Ethics Review Commission



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