



BOARD/COMMISSION RECOMMENDATION

ETHICS REVIEW COMMISSION

Recommendation Number: 20141112-03e

WHEREAS, the issue of jurisdiction for determining violations of the City of Austin's Code of Ethics (City Code, Article 4, Chapter 2-7) is being addressed by the City Council;

WHEREAS, the Ethics Review Commission (the Commission) has been charged with enforcing high ethical standards in the City of Austin since 1976;

WHEREAS, the Commission does not at all question the integrity or capability of the Office of the City Auditor, the Commission expresses concerns about a lack of public accountability, transparency, and due process;

WHEREAS, the Council acted on October 16, 2014, by passing Resolution No. 20141016-024 and Resolution No. 20141016-033, which laid the foundation for making changes to the City Code with regard to jurisdiction for enforcement of the City's Code of Ethics;

NOW, THEREFORE, BE IT RESOLVED that the Ethics Review Commission encourages the Austin City Council to consider the following principles in its process of amending enforcement jurisdiction for the City's Code of Ethics:

1. The Commission, as the independent citizen panel, should retain sole jurisdiction to investigate allegations of and make final determinations of violations of the Code of Ethics made against the Mayor and members of the City Council;
2. For the same reasons, the Commission should also retain sole jurisdiction over all officials appointed directly by the City Council (including but not limited to the City Manager, City Auditor, Municipal Court Judges, Municipal Court Clerk, City Clerk, Boards and Commissions appointees, and direct Council staff);
3. The Commission strongly urges the Council to consider the importance of due process in whatever Code amendments it makes with regard to processes outside the jurisdiction of the Commission and to ensure that due process remains the foundation of the Commission's process as well;
4. To provide a clear line in the sand where jurisdiction should be maintained by the Commission, we propose that the Commission maintain sole jurisdiction over ethics complaints against any City


official or employee who is not covered by municipal civil service or labor agreements that clearly outline a due process for responding to allegations of wrongdoing;

5. For complaints against City executives or assistant City attorneys, the Commission recommends that complaints can continue to be filed directly with the Commission. Alternatively, for complaints filed with the City Auditor, there should be an investigation process that involves a respondent being given the opportunity to respond to a draft copy of the Auditor's report before it is issued. The response should be included with the final report issued on the allegation;
6. The Commission acknowledges that jurisdiction to investigate allegations of ethics violations against City staff protected by a civil service process or other labor agreements is unnecessary. The City Auditor is better equipped to investigate such allegations, and the employees have other due process protections in place;
7. The Commission believes that there is need for there to be an anonymous complaint process. The Commission as currently established does not have the staff or resources to adequately investigate anonymous (and often unsubstantiated) complaints. We urge the Council to give this careful consideration when developing its Code amendments;
8. The Commission urges Council to require that the Auditor's Office expand the amount of detail and, whenever possible, use plain language in investigative reports to ensure clarity to third parties. This is to ensure that the Commission can reasonably use an Auditor's report as the basis for a preliminary hearing;
9. Because of the Auditor's policy of protecting the details of their investigation process, the Council should not grant the Auditor authority to make final determinations of a violation of the Code of Ethics. Instead, the Auditor should continue to refer Auditor investigation reports to the appropriate entity depending on who has jurisdiction (Council, ERC, APD, or other as determined by the Council); and
10. For all complaints alleging violations of the City's Code of Ethics that are within the jurisdiction of both the Commission and the City Auditor, the Council should be clear that while the Auditor may conduct an investigation, if evidence supports a suspected violation having occurred, the Auditor should refer the matter to the Commission, and the Commission should be empowered to determine if an ethics violation has occurred.

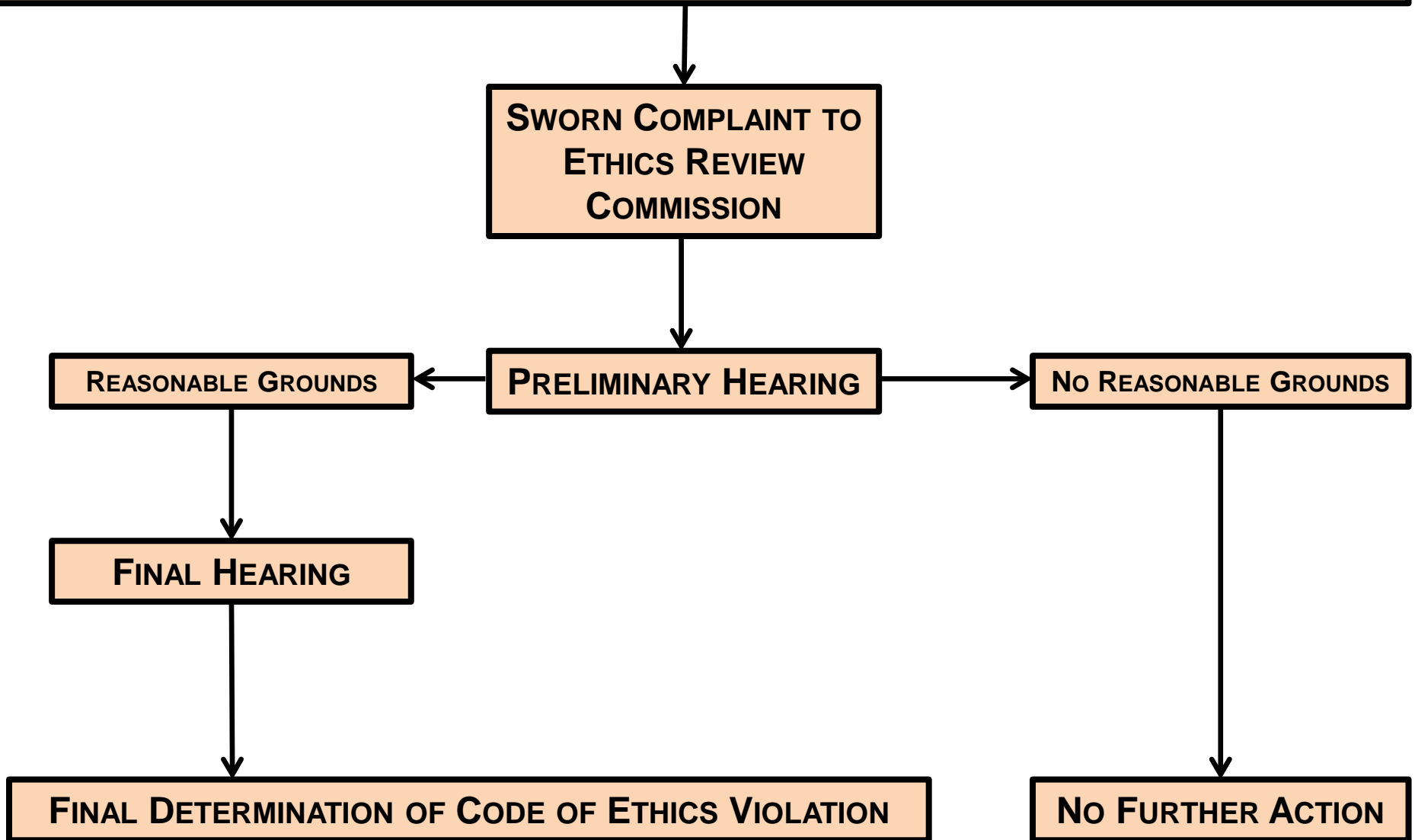
Date of Approval: November 12, 2014

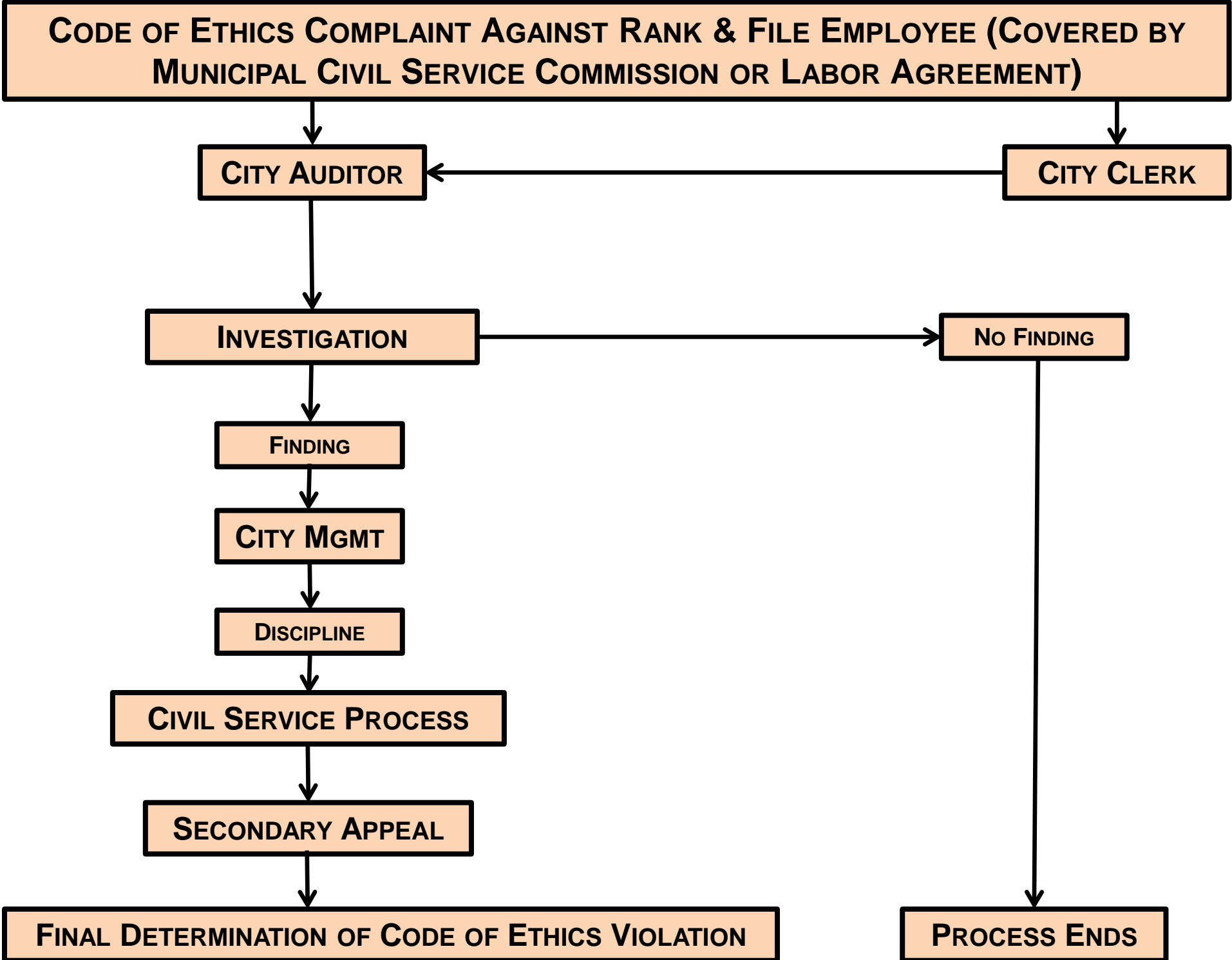
Record of the vote: Unanimous on a 5-0 vote (Absent: James Ruiz and Sylvia Hardman-Dingle).

Attest: _____


Commission Chair Austin Kaplan

CODE OF ETHICS COMPLAINT FILED AGAINST COUNCIL, PERSONS APPOINTED BY COUNCIL, COUNCIL DIRECT STAFF, CITY EXECUTIVES, OR ASSISTANT CITY ATTORNEYS





CODE OF ETHICS COMPLAINT FILED AGAINST CITY EXECUTIVES OR ASSISTANT CITY ATTORNEYS

CITY AUDITOR

INVESTIGATION

RESPONSE

REPORT ISSUED

ERC

FINAL DETERMINATION OF CODE OF ETHICS VIOLATION

