

CITY OF AUSTIN ETHICS REVIEW COMMISSION

MARK WALTERS
Complainant

v.

AUSTIN COUNCIL MEMBER
DON ZIMMERMAN
RESPONDENT

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Complaint No. 20150727

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On July 27, 2015, Mark Walters (“Complainant”) submitted to the Austin City Clerk a Sworn Complaint (“the Complaint”) against Council Member Don Zimmerman (“Respondent”). 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 10, 2015, Commission Executive Staff Liaison and City of Austin Assistant City Attorney Cynthia Tom (“Tom”) issued a Second Revised Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for September 28, 2015, and advising the Respondent and Complainant of procedures for the Preliminary Hearing.

II. FINDINGS OF FACT

- Respondent is an Austin City Council Member, District 6, and held that same position at all times relevant to the Complaint.
- Complainant alleges that Respondent violated Sections 2-2-25 (Annual Reconciliation Filing by Candidates and Campaign Committees) and 2-2-42 (Annual Reconciliation of Campaign Debt), Austin City Code, on January 15,

2015, by failing to include information required by those sections with his January 15 contribution and expenditure report.

- To date, the documents required by those sections have not been filed.
- Complainant and Respondent were each afforded an opportunity to appear at the Preliminary Hearing in accordance with Chapter 2-7 of the City Code and the Rules of the Commission. Complainant appeared in person. Respondent's attorney appeared at the hearing, but the Respondent was not present.
- The Respondent's attorney acknowledged that the Respondent did not file the forms as alleged in the Complaint, but did not admit that a violation has occurred.

III. CONCLUSIONS OF LAW

- The September 28, 2015, meeting of the Commission and the Preliminary Hearing were 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.
- The Commission has jurisdiction over complaints alleging violations of Chapter 2-2 of the City Code (The Austin Fair Campaign Chapter), 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).
- The Complaint was filed with the City Clerk, was sworn to by Complainant, and identifies the section of the City Code alleged to have been violated, as required by Section 2-7-41 of the City Code.

- The Complaint alleges a violation under Section 2-2-25 of the Austin City Code (Annual Reconciliation Filing by Candidates and Campaign Committees) which provides:

(A) A candidate, officeholder, or campaign committee filing a January 15 year-end contribution and expenditure report shall provide the following information for the previous calendar year for each checking, savings, or other financial institution account:

- (1) name of the financial institution and type of account;
- (2) a listing of date, payee, and amount of checks issued on that account that have not cleared by December 31;
- (3) a listing of checks received as contributions and deposited, but dishonored by the contributor's financial institution;
- (4) all interest or dividends earned;
- (5) all deposits and withdrawals not disclosed on a filed contribution and expenditure report; and
- (6) the beginning and ending balance.

(B) A candidate, officeholder, or campaign committee filing a January 15 year-end contribution and expenditure report shall file a listing of all checks identified by date of receipt, contributor, and amount, received by December 31 but not deposited into any account. Checks received by the candidate, officeholder, or campaign committee must be disclosed whether or not they have been "accepted" within the definition of the Texas Election Code.

- The complaint also alleges a violation under Section 2-2-42 of the Austin City Code (Annual Reconciliation of Campaign Debt) which provides:

An officeholder must include in the reconciliation filed with his or her annual January 15 contribution and expenditure report the following information for each calendar year:

- (A) campaign debt in existence as of the first day of each calendar year;

(B) campaign debt in existence as of the last day of each calendar year;

(C) in addition, the officeholder shall report the following information on all campaign debt existing as of December 31 of the reporting year:

(1) for loans and other debt evidenced by a note, the name of the creditor, the principal amount owed, the interest rate, and the date of maturity;

(2) for all other campaign debts, the name of the creditor and the principal amount owed; and

(3) debts under \$50 may be aggregated and reported as a miscellaneous category.

- Under Section 2-7-44 of the City Code (“Section 2-7-44”), the issue to be considered by the Commission at a Preliminary Hearing is the existence of reasonable grounds to believe that a violation of a provision within the jurisdiction of the Commission has occurred.

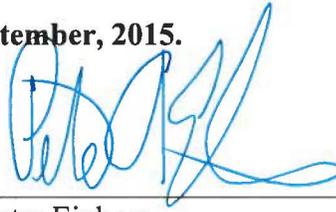
IV. DETERMINATION OF THE ETHICS REVIEW COMMISSION

- The Commission determines that reasonable grounds exist to believe that a violation of Section 2-2-25 of the Austin City Code, a provision within the jurisdiction of the Commission, has occurred as a result of the actions or omissions alleged in the Amended Complaint.
- The Commission determines that reasonable grounds exist to believe that a violation of Section 2-2-42 of the Austin City Code, a provision within the jurisdiction of the Commission, has occurred as a result of the actions or omissions alleged in the Amended Complaint.

V. FINAL HEARING

- The Commission sets the Complaint for Final Hearing on October 13, 2015.
- The Commission requests additional information and the presence of witnesses at the Final Hearing consistent with the Commission's direction from the dais at the Preliminary Hearing.

ORDERED as of the 28th day of September, 2015.



Peter Einhorn
Vice-Chair, Ethics Review Commission