

CITY OF AUSTIN ETHICS REVIEW COMMISSION

**MARK WALTERS,
COMPLAINANT**

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Complaint No. 20150727

v.

**AUSTIN CITY COUNCIL MEMBER
DON ZIMMERMAN,
RESPONDENT**

ORDER ON FINAL 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.

On September 28, 2015, the Commission conducted a Preliminary Hearing. In its Order on Preliminary Hearing, the Commission determined that reasonable grounds existed to believe that a violation of Section 2-2-25 (Annual Reconciliation Filing by Candidates and Campaign Committees) and 2-2-42 (Annual Reconciliation of Campaign Debt) of the Austin City Code had



occurred as alleged in the Complaint as a result of actions or omissions of Respondent. The Commission set this matter for a Final Hearing to be held on October 13, 2015.

On October 6, 2015, Tom issued a Request for Information and Notice of Final Hearing for October 13, 2015. The October 6 Request and Notice advised Complainant and Respondent of procedures for the Final Hearing. Pursuant to Section 2-7-46 of the Austin City Code, the October 6 Request and Notice made a request to the Respondent for documentary evidence and requested the presence of both Complainant and Respondent at the Final Hearing. The October 6 Request and Notice directed that any evidence to be submitted by the Complainant and Respondent, including the documentary evidence requested from Respondent, be submitted no later than 5:00 p.m. October 9, 2015. On behalf of the Commission, the City of Austin Law Department also requested certain documentary evidence from the City Clerk.

On October 9, 2015, the agenda for the October 13, 2015, meeting of the Commission and Final Hearing in this matter was timely posted.

Prior to the October 13 Final Hearing, the City responded to the Request for Information by providing responsive documents to the Commission. Also prior to the Final Hearing Respondent submitted a number of exhibits. On the date of the Final Hearing Respondent provided the documentary evidence requested by the Commission.

II. FINDINGS OF FACT

1. Respondent is an Austin City Council Member, District 6, and held that same position at all times relevant to the Complaint.
2. 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, 2015, campaign finance report.

3. As of October 13, 2015, the documents required by those sections have not been filed by Respondent.
4. Complainant and Respondent were each afforded an opportunity to appear at the Final Hearing in accordance with Chapter 2-7 of the Austin City Code and the Rules of the Commission. Complainant appeared in person. Respondent's attorney appeared at the hearing, but Respondent was not present, although the Commission requested his presence.
5. At the Final Hearing, all exhibits pre-filed by Respondent, exhibits previously filed by Complainant, and the documents tendered by the City Clerk, were accepted into the record.
6. The Commission also voted to accept into the record an exhibit proffered by Respondent after the deadline that was responsive to the October 6 Request and Notice, but declined to accept another exhibit proffered by Respondent's attorney.
7. At the Final Hearing, both the Complainant and Respondent's attorney made verbal statements and responded to questions from the Commission.
8. Respondent's attorney acknowledged that Respondent did not file the forms as alleged in the Complaint.
9. Respondent's attorney averred that Section 2-2-5 of the Austin City Code requires proof that Respondent "knowingly" violated the ordinance, that the wording in the ordinances at issue is vague, and that Respondent did not knowingly violate the ordinances at issue.



III. CONCLUSIONS OF LAW

1. The October 13, 2015, meeting of the Commission and the Final Hearing were properly noticed in accordance with Chapter 2-7 of the Austin City Code, the Ethics and Financial Disclosure Ordinance, and the Texas Open Meetings Act.
2. The Commission has jurisdiction over complaints alleging violations of Chapter 2-2 of the Austin City Code (The Austin Fair Campaign Chapter), Chapter 4-8 of the Austin City Code (Regulation of Lobbyists), Article III, Section 8 of the Austin City Charter, (Limits on Campaign Contributions and Expenditures), Chapter 2-7 of the Austin City Code (Ethics and Financial Disclosure), and Section 2-1-24 of the Austin City Code (Conflict of Interest and Recusal).
3. The Complaint was filed with the City Clerk, was sworn to by Complainant, and identified the provisions of the Austin City Code alleged to have been violated, as required by Section 2-7-41 of the Austin City Code.
4. The Complaint alleges a violation of 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.

5. The complaint also alleges a violation of 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.

6. Under Section 2-7-45 of the Austin City Code, the issue to be considered by the Commission at a Final Hearing is whether a violation of the cited section of the Austin City Code has occurred. The Commission shall make its final determination based on a preponderance of the credible evidence in the record.

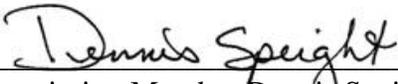


7. The Commission determined that while Section 2-2-5 of the Austin City Code may be applicable to the criminal prosecution of the ordinances at issue, it was not applicable to a sanction under Section 2-7-49 of the Austin City Code.
8. As alleged in the Complaint, the Respondent did not provide with his January 15, 2015, campaign finance report filed with the City Clerk the information required by Sections 2-2-25 and 2-2-42 of the Austin City Code.

IV. DETERMINATIONS OF THE ETHICS REVIEW COMMISSION

1. The Commission determines that Respondent violated Sections 2-2-25 and 2-2-42 of the Austin City Code, provisions within the jurisdiction of the Commission, as alleged in the Complaint by failing to provide the information required by those sections.
2. The Commission will not refer the Complaint to the City Attorney for prosecution.
3. The Commission determines that this violation was committed through disregard of Chapter 2-2 of the Austin City Code.
4. The Commission determines that the appropriate sanction for Respondent's violation is a Reprimand under Section 2-7-49 of the Austin City Code.
5. The Commission directs the Respondent to correct the report at issue to provide the information required by Sections 2-2-25 and 2-2-42 of the Austin City Code.

ORDERED as of the 13th day of October, 2015.



Commission Member Dennis Speight

