

**ETHICS REVIEW COMMISSION**  
**CHAPTER 2-7 CITY CODE**  
**COMPLAINT**

NAME OF PERSON(S) FILING COMPLAINT: Fred McGhee  
MAILING ADDRESS: 2316 Thresher Ln., Austin, TX 78741  
PHONE NUMBER: (512) 245-6027  
EMAIL ADDRESS: [REDACTED]

PLEASE FILE A SEPARATE COMPLAINT FORM FOR EACH PERSON COMPLAINED AGAINST.

NAME OF PERSON COMPLAINED AGAINST: Historic Landmark Commission  
CITY OFFICE, DEPARTMENT, COMMISSION: \_\_\_\_\_  
MAILING ADDRESS: \_\_\_\_\_  
PHONE NUMBER [IF KNOWN]: \_\_\_\_\_  
EMAIL ADDRESS [IF KNOWN]: \_\_\_\_\_

The Ethics Review Commission has jurisdiction to hear complaints alleging violation(s) of the following provisions:

- City Code, Chapter 2-1, Section 2-1-24 (City Boards, Conflict of Interest and Recusal)
- City Code, Chapter 2-2 (Campaign Finance)
- City Code, Chapter 2-7 (Ethics and Financial Disclosure), except for Article 6 (Anti-lobbying and Procurement)
- City Code, Chapter 4-8 (Regulation of Lobbyists)
- City Charter, Article III, Section 8 (Limits on Campaign Contributions and Expenditures)

PLEASE LIST EACH ALLEGED VIOLATION OF THE ABOVE CITY CODE AND CHARTER PROVISIONS SEPARATELY ON THE FOLLOWING PAGES.

2015 NOV 20 PM 1 55

RECEIVED  
AUSTIN CITY CLERK  
November 23, 2014

I.

SECTION OF CHARTER OR ORDINANCE VIOLATED: 2-7-41, 2-1-44

DATE OF ALLEGED VIOLATION: 24 Aug 2015

ACTIONS ALLEGED TO BE A VIOLATION:

See attached letter

WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED: \_\_\_\_\_

See attached

II.

SECTION OF CHARTER OR ORDINANCE VIOLATED: \_\_\_\_\_

DATE OF ALLEGED VIOLATION: \_\_\_\_\_

ACTIONS ALLEGED TO BE A VIOLATION:

WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED: \_\_\_\_\_

III.

SECTION OF CHARTER OR ORDINANCE VIOLATED: \_\_\_\_\_

DATE OF ALLEGED VIOLATION: \_\_\_\_\_

ACTIONS ALLEGED TO BE A VIOLATION:

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WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED: \_\_\_\_\_

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IV.

SECTION OF CHARTER OR ORDINANCE VIOLATED: \_\_\_\_\_

DATE OF ALLEGED VIOLATION: \_\_\_\_\_

ACTIONS ALLEGED TO BE A VIOLATION:

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WITNESSES OR EVIDENCE THAT WOULD BE PRESENTED: \_\_\_\_\_

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\_\_\_\_\_  
[IF MORE ROOM IS NECESSARY, PLEASE CONTINUE ON A BLANK PAGE  
USING THE SAME FORMAT]

ALL THE STATEMENTS AND INFORMATION IN THIS COMPLAINT ARE TRUE  
AND FACTUAL TO THE BEST OF MY KNOWLEDGE.

DATE: 11/20/15

  
COMPLAINANT'S SIGNATURE

Fred McGhee  
PRINT NAME

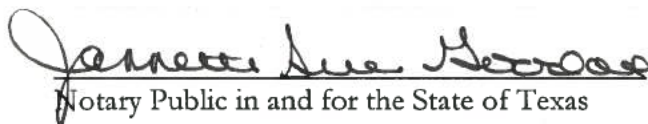
STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged, sworn to and subscribed before me by

Fred McGhee

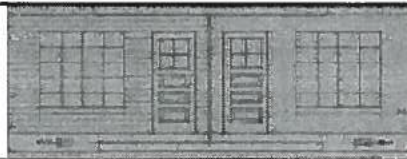
On the 20 day of NOVEMBER, 2015, to certify which  
witness my hand and official seal.

  
Notary Public in and for the State of Texas

Jannette Sue Goodall  
Typed or Printed Name of Notary



THIS FORM MUST BE SUBMITTED TO THE OFFICE OF THE CITY CLERK.



City of Austin Ethics Commission  
% Austin City Clerk  
301 West 2nd Street  
Austin, TX 78701

November 20, 2015

RE: Ethics Complaint against the Historic Landmark Commission

Pursuant to section 2-7-41 of the Austin City Code, this is an official complaint against the Historic Landmark Commission and its members for endorsing numerous violations of city ordinances by its assigned staff (i.e. Mr. Steve Sadowsky) and for conducting its August 2015 meeting in violation of city ordinance and state law. Per section 2-7-2 of the Austin City Code, the members of the Historic Landmark Commission are considered city officials and are subject to city ethics rules.

Specifically, the commission violated City of Austin ordinance 2-7-1(A) by failing in its duty to properly evaluate the nomination of the Rosewood Courts Historic District for local historic district status. The commission unanimously endorsed the National Register nomination for the property at its December 2013 meeting, but at the August 2015 meeting did not vote to support local historic district status, despite being furnished the same information. In spite of the fact that the commission had previously already approved the nomination, none of the commissioners who voted against the local historic district designation—all of them new appointees with scant historic preservation experience—explained the *historic preservation* rationale behind their decision.

None of the commissioners questioned the misleading and incorrect staff presentation made by Mr. Sadowsky regarding this case. During the meeting they also permitted Mr. Sadowsky to move the item further and further back into the agenda without explanation. This delay tactic resulted in the agenda item not being heard for hours into the meeting, a sign of profound lack of respect and courtesy to the witnesses who came to the meeting to testify, which included a mobility-impaired disabled veteran (myself) and the chair of the African-American Cultural Heritage District (Rev. Freddie Dixon) an elderly gentleman of distinction who walks with a cane.

In practice it is Mr. Sadowsky who runs the commission meetings, not the commissioners. The commission's acceptance of Mr. Sadowsky's meeting dominance and their lack of initiative in furnishing him with superintendence is particularly troublesome, considering that there were commissioners who were in a position to correct Mr. Sadowsky's basic errors of fact, given that they had already voted in favor of endorsing the National Register nomination and should have been familiar with what it states. Instead of correcting or even questioning Mr. Sadowsky's flawed presentation, most commissioners chose to remain quiet.

Interestingly, the vote at the August HLC meeting was 4-2 in *favor* of recognizing the property as historic<sup>1</sup>, but after my colleagues and I left the meeting believing that the commission had voted to start the process of

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<sup>1</sup> The Historic Landmark Commission was a seven member commission but now contains eleven members. Seven commissioners attended the August 2015 meeting, enough for a quorum, but only six voted due to a recusal. Video of the Rosewood Courts discussion and vote is located at the following: <http://austintx.swagit.com/play/08242015-1094>.



landmarking the property (which would have directed staff to research the property and to develop a historic preservation package for further consideration culminating in an up or down vote at a future meeting) we were informed the following morning by a local newspaper reporter that the vote was in fact a 3-3 split vote. The reason for the disparity has never been explained by Mr. Sadowsky or the commissioners. The reason why the voting outcome was unclear was because the new commission chair (Commissioner Galindo) did not announce the final vote for any cases at the meeting, including ours. This is a violation of Roberts Rules of Order, as well as state law, which specifically require the final vote of a governmental body to be clearly announced and properly recorded. Accordingly, a violation of section 2-1-44 of the city's code is also alleged and is asked to be investigated by the Ethics Commission.

Another issue of staff mismanagement countenanced by the commission is the issue of standing. The persistent information asymmetry between Mr. Sadowsky, applicants and the commissioners has been used to manipulate the process in order to forestall proper consideration of agenda items. To elaborate:

Questions of standing or of a meeting quorum (including recusals) should never be a surprise. Such matters are handled beforehand. If a sufficient number of commissioners cannot attend all or part of a meeting, the item is usually pulled (rescheduled) or the whole meeting is canceled. Similarly, if an applicant does not have standing to present before the commission, it is staff's responsibility to inform the commissioners and the applicant beforehand. As the supporting documents furnished to the Ethics Commission show, I first appeared before the Historic Landmark Commission regarding the Rosewood Courts matter in June of 2015, after having notified Mr. Sadowsky of my intent to pursue Local Historic District designation earlier in the spring of 2015. At my request, in June the commission voted to schedule the agenda item for its July meeting (the last meeting of the old seven-member commission) but *at the last minute* Mr. Sadowsky informed me he pulled the item off the July meeting agenda because according to section 25-2-242 of the Austin City Code citizens do not have the authority to initiate historic zoning, even for public property.<sup>2</sup> Disappointed by this untimely surprise, I requested that the agenda item be taken up as quickly as possible. The agenda item was then moved to the August 2015 agenda, which coincidentally was also the first meeting of the new 10-1 Historic Landmark Commission. Only two commissioners—commissioners Galindo and Myers—were re-appointees and had voted for the original national register listing in 2013. The other seven commissioners listed on the August 2015 agenda as members were new appointees and were seeing the item in an official capacity for the first time, at their first meeting. Lacking a historical perspective, they were therefore more susceptible to being misled by biased staff summary or public testimony. The lack of substantive *historic preservation* discussion at the meeting would bear this out; the commissioners almost exclusively directed their questions to the Austin Housing Authority and its plans for the Rosewood Courts property and did not ask any questions about the 91 page National Register nomination and the arguments it produces for landmark eligibility.

Allowing city staff to control meetings, manipulate the process and to present false information in such ways is not just bad ethics, it constitutes a failure to exercise proper meeting management initiative to the point of creating a violation of the public trust. This is especially the case if meeting results and meeting minutes are retroactively altered by the commissioners at the request of city staff, something which has also taken place. To elaborate:

A June 2015 Historic Landmark Commission vote regarding item B-11 on that meeting's agenda has been retroactively altered by the new 10-1 commission at the request of Mr. Sadowsky. As the supporting documents furnished you show, commissioner Leslie Wolfenden-Guidry originally recused herself from voting on this agenda item due to conflict of interest concerns but voted on the item anyway. However her recusal on the agenda item has been altered *post hoc*, with no proper public discussion or vote documenting the reversal of Leslie Wolfenden-Guidry's recusal. This is not a question of intent on the part of one particular commissioner; the present Historic

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<sup>2</sup> This is not the case with the federal National Register process. *Any person* has the authority to initiate the national register nomination process, regardless of the public property owner's desires. See 36 CFR 60.1(b)(4).

Landmark Commissioners should not have voted *as a commission* to retroactively change the June 2015 meeting minutes to reflect a vote that should never have been counted. This is an example of mismanagement on the part of staff and bad judgment on the part of the commissioners and along with the shady manipulation of the Rosewood Courts process already discussed is a violation of Section 2-7-41 of the Austin City Code.

It bears noting that accusations of biased judgment and tenebrous administration on the part of this commission and its staff are not new. The 2010 audit of this commission, a copy of which has been furnished to you along with this complaint, makes similar findings of carelessness and inattention to detail, all of which have produced the cumulative effect of adversely impacting the proper historic preservation of East Austin accidentally on purpose.

The persistent lack of professionalism and double standards exercised by the Historic Landmark Commission bring shame and embarrassment upon our city, particularly within professional historic preservation circles domestically and abroad. These unfortunate practices have also long undermined the community's confidence in the ethics of our city's public servants. Instead of an equitable program commemorating the history of every part of our city, the evidence suggests that Austin's historic preservation program has primarily become a misguided and publicly financed property tax reduction program geared for taxpayers who own high-dollar West Austin real estate.

Given the seriousness and recurrent nature of the alleged transgressions, I respectfully request that the Ethics Commission undertake a full investigation of these concerns and consider issuing a formal reprimand or other higher sanction of the Historic Landmark Commission instead of an admonition.

In accordance with the City of Austin Ethics Code, I also respectfully request that the chair of the Historic Landmark Commission be presented with a copy of this complaint, along with the city attorney and the Ethics Commission. In addition, I ask that a full and complete public preliminary hearing be conducted by the Ethics Commission regarding this complaint within 20 working days.

I can be reached at (512) 275-6027 or at [REDACTED] if there are questions or for purposes of notification.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fred L. McGhee', with a stylized flourish at the end.

Fred L. McGhee, Ph.D.

# HISTORIC LANDMARK COMMISSION ATTENDANCE & CONFLICT OF INTEREST SHEET

CITY HALL

301 WEST 2ND STREET

AUSTIN, TEXAS

Date: June 22, 2015; 7:00 pm

A board member has a conflict of interest if City Code Chapter 2-7 or Local Government Code Chapter 171 prohibits the board member from taking action on a vote or decision before the board.

By signing below, I certify that I was in attendance at this meeting and that I meet the residency requirement and certify that I have disclosed whether I have a conflict of interest related to any agenda item, and I agree not to participate in a discussion, deliberation, or vote on an agenda item for which I have a conflict of interest.

NAME OF BOARD MEMBER	If you have <u>NO</u> conflict of interest on any agenda item, sign here.	If you <u>have a conflict of interest</u> , sign here and identify the agenda item in the next column.	Agenda item number for which you have a conflict of interest.
Laurie Limbacher, Chair	<i>Laurie Limbacher</i>		
John Rosato, Vice-Chair			
Mary Jo Galindo	<i>Mary Jo Galindo</i>		
Andrea Roberts	<i>Andrea Roberts</i>		
Leslie Wolfenden-Guidry		<i>Leslie Wolfenden</i>	1511
Daniel Leary			
Terri Myers			





HISTORIC LANDMARK COMMISSION  
Monday, June 22, 2015 – 7:00 P.M.  
City Council Chambers, City Hall  
301 W. 2nd Street  
REGULAR MEETING  
Austin, Texas

CURRENT BOARD MEMBERS:

\_\_\_\_ Laurie Limbacher, Chair  
\_\_\_\_ Andrea Roberts  
\_\_\_\_ Dan Leary  
\_\_\_\_ Mary Jo Galindo  
\_\_\_\_ John Rosato, Vice-Chair  
\_\_\_\_ Leslie Wolfenden Guidry  
\_\_\_\_ Terri Myers

AGENDA

CALL TO ORDER

I. CITIZEN COMMUNICATION: GENERAL

The first three speakers signed up prior to the meeting being called to order will each be allowed a three-minute allotment to address their concerns regarding items not posted on the agenda.

Topic	Name	Address	Phone
✓ Rosewood Court	Fred McBlair	Montopolis	275-6027
✓ Rosewood Cir	Mittell Zell Hansig Authority	Austin, TX	512-476-1080
<del>XXXXXX</del>			

II. APPROVAL OF MINUTES

1. May 18, 2015

III. BRIEFINGS: DISCUSSION AND POSSIBLE ACTION.

IV. PUBLIC HEARINGS

A. DISCUSSION AND ACTION ON APPLICATIONS FOR HISTORIC ZONING,  
DISCUSSION AND POSSIBLE ACTION ON APPLICATIONS FOR HISTORIC



**Austin City Council**

**Mayor**  
Lee Leffingwell

**Mayor Pro Tem**  
Mike Martinez

**Council Members**  
Chris Riley  
Randi Shade  
Laura Morrison  
Bill Spelman  
Sheryl Cole

**City Auditor**  
Kenneth J. Mory  
CPA, CIA, CISA

**Historic Landmark Commission Audit**

**March 23, 2010**

Office of the City Auditor  
Austin, Texas



### **Audit Team**

Henry Katumwa, Auditor-In-Charge, CICA  
Emily Roberts, CIA, CICA

### **Assistant City Auditor**

Corrie Stokes, CIA, CGAP

A full copy of this report is available for download at our website:  
<http://www.ci.austin.tx.us/auditor/reports>. You may also contact our office by email at  
[oca\\_auditor@ci.austin.tx.us](mailto:oca_auditor@ci.austin.tx.us).  
Please request Audit No. AU010106.

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Alternative formats are available upon request.  
Please call (512) 974-2805 or Relay Texas #711.



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# City of Austin



## Office of the City Auditor

301 W. 2nd Street, Suite 2130  
P.O. Box 1088  
Austin, Texas 78767-8808  
(512) 974-2805, Fax: (512) 974-2078  
email: [oca\\_auditor@ci.austin.tx.us](mailto:oca_auditor@ci.austin.tx.us)  
website: <http://www.ci.austin.tx.us/auditor>

Date: March 23, 2010  
To: Mayor and Council  
From: Kenneth J. Mory, City Auditor  
Subject: Historic Landmark Commission Audit

I am pleased to present this audit report on the Historic Landmark Commission (HLC). This audit was requested and approved by the Audit and Finance Committee and was included as part of our office's FY 2010 Service Plan.

The purpose of this audit was to determine whether:

1. the HLC is operating in compliance with the City of Austin Code of Ordinances and HLC bylaws.
2. staff liaisons are providing support services to the HLC on a timely basis as prescribed by the applicable City Code and the City policies.

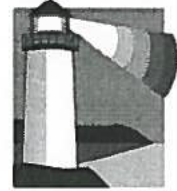
We found that HLC members appear to be complying with City Code requirements for taking actions, commission member eligibility, City training, and the filing of public finance statements. However, they are not consistently complying with all requirements related to Board meetings procedures. In addition, staff liaisons are not providing adequate support to HLC members to assist them in carrying out their duties.

We particularly appreciate the cooperation and assistance we received from the Historic Landmark Commission, the City Clerk's Office, the Law Department, and the Historic Preservation Office of the Planning and Development Review Department.





## COUNCIL SUMMARY HISTORIC LANDMARK COMMISSION AUDIT



This report presents the results of our audit of the Historic Landmark Commission. We had the following findings:

Finding 1: Historic Landmark Commission members generally comply with eligibility requirements specified in the City Code.

Finding 2: The Historic Landmark Commission is partially complying with requirements for meeting procedures.

- Commission members generally comply with requirements related to meeting quorum and actions.
- The Commission did not adopt Commission bylaws, as required by City Code, in a timely manner.
- The Commission is not consistently complying with Texas Local Government Code requirements for sovereign boards, which require disclosing conflicts of interest and filing an affidavit with the City Clerk regarding any "substantial interest". Commission members were not aware they were serving on a sovereign board.

Finding 3: The Historic Landmark Commission is not complying with the City Code requirements for annual reports and work plan reviews.

- The Commission has not submitted either an annual report or work plan as required in 2008 and 2009. Commission members thought that Historic Preservation Office staff were responsible for the reports rather than the Commission.

Finding 4: The Historic Landmark Commission staff liaisons are not providing adequate support to HLC members to assist them in carrying out their duties.

- Staff liaisons are not providing timely meeting information packets to Commission members.
- Staff liaisons have not consistently presented meeting minutes to the Commission for approval.
- Staff liaisons have not consistently provided sign-in sheets at Commission meetings, which help document attendance and conflicts of interest.





## ACTION SUMMARY HISTORIC LANDMARK COMMISSION AUDIT



Recommendation	Management Concurrence	Proposed Implementation Date
<b>To ensure that the Historic Landmark Commission complies with regulations for City Boards and to mitigate the risk of legal challenges:</b>		
01. The Director of the Planning and Development Review Department should ensure that Historic Preservation Office staff are trained on code requirements and monitored to ensure that they provide sufficient guidance to Historic Landmark Commission members.	Concur	Ongoing
02. The Chair of the Historic Landmark Commission should ensure that the Commission, with the support of Historic Preservation Office staff, prepares an annual report and work plan as required by the City Code.	Concur	May 2010



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## BACKGROUND

The Historic Landmark Commission Audit was approved by the Audit and Finance Committee as part of the Office of the City Auditor's FY 2010 Service Plan.

The activities of the Historic Landmark Commission (HLC) are chiefly guided by the City of Austin Code of Ordinances, approved by the City Council, and the Historic Landmark Commission bylaws.

The HLC is a sovereign board composed of seven Austin residents appointed by the City Council. The HLC advises the Council on historic preservation issues. It also initiates and reviews zoning cases to establish or remove historic designation; reviews and issues Certificates of Appropriateness for exterior alterations to City Historic Landmarks; approves tax abatement applications for designated City Historic Landmarks; reviews building, relocation and demolition permits and signage in the historic districts; and develops and updates a historic preservation plan for the city. The exhibit below shows the types of issues addressed by the HLC during the period from January 2009 to January 2010.

**Number of Cases Addressed by the HLC  
January 2009 to January 2010**

Meeting Date	Zoning Cases	Certificate of Appropriateness Cases (for changes to historically zoned properties)	National Register Historic District Cases	Demolition/Relocation Reviews	Tax Exemption Applications
Jan-09	1	4	9	4	0
Feb-09	5	0	6	2	1
Mar-09	7	6	2	4	0
Apr-09	1	1	3	9	398
May-09	4	3	0	2	4
Jun-09	7	2	4	1	0
Jul-09	14	4	3	4	0
Aug-09	4	4	3	2	0
Sep-09	11	5	6	5	0
Oct-09	18	2	0	0	0
Nov-09	14	4	0	5	0
Dec-09	4	3	2	2	0
Jan-10	6	8	5	2	0
<b>Total</b>	<b>96</b>	<b>46</b>	<b>43</b>	<b>42</b>	<b>403</b>

SOURCE: Historic Landmark Commission Meeting Minutes

The Historic Preservation Office (HPO) of the Planning and Development Review Department provides administrative and support services to the HLC. The HPO has three full-time equivalents reporting to a division manager.

Currently the City of Austin has 542 designated historical structures and 1 locally designated historic district.



## **OBJECTIVES, SCOPE, AND METHODOLOGY**

### **Objectives:**

The purpose of this audit was to determine whether:

1. the HLC is operating in compliance with the City of Austin Code of Ordinances and the Historic Landmark Commission bylaws.
2. staff liaisons are providing support services to the HLC on a timely basis as prescribed by the applicable City Code and policies.

### **Scope:**

The scope of this audit includes the activities of the HLC for the period from January 2009 to the present.

### **Summary of Methodology**

In order to achieve the objectives of this audit we:

- conducted interviews of staff in the applicable departments and HLC board members.
- obtained and reviewed applicable information from HLC meeting documentation.
- obtained and reviewed applicable laws and regulations including the City Code, City policies, and the HLC bylaws.
- developed and administered a short survey of support staff for 12 City boards or commissions in addition to the HLC.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## AUDIT RESULTS

Some Historic Landmark Commission (HLC) activities comply with the City Code and the HLC bylaws. However, we also identified some cases of non-compliance with the City Code and City policy requirements for conducting meetings and reporting on HLC activities. In addition, we noted that HLC members are not receiving the necessary support to carry out required duties.

### **FINDING 1: Historic Landmark Commission members generally comply with eligibility requirements specified in the City Code.**

The City Code requires that Commission members file certain documents and obtain training related to City Boards and Commissions.

The City Code lists the eligibility requirements for all City of Austin Board and Commission members. The Code requires each member to file an application and acknowledgement with the City Clerk in order to be eligible for appointment. We verified that all the HLC members submitted written applications to the City Clerk and signed the required written acknowledgements.

In addition, the City Code requires HLC members to file public financial disclosure statements with the City Clerk by the last Friday in April of each year. An HLC member who does not comply with this requirement automatically vacates the member's position. We verified that all HLC members filed the required Public Financial disclosure information for the year 2008 within the stipulated time.

The City Code also requires that City Board and Commission members complete an initial City Board course, not later than the 90<sup>th</sup> day after the date of a particular member's appointment to the Board. In addition, the City Code requires Board and Commission members serving as of December 10, 2007 to complete this initial training not later than December 31, 2008. The Code also requires Board and Commission members to annually complete a refresher course. Based on our review of the training records, all HLC members completed the required initial training and the refresher training for the year 2009 as required.

### **FINDING 2: The Historic Landmark Commission is partially complying with requirements for meeting procedures.**

**HLC members generally comply with the requirements of the City Code and the HLC bylaws related to Board and Commission meeting quorum and actions.** The City Code states that if a Board or Commission has seven members, four members constitute a quorum and the four people must be physically present at a meeting to conduct business. In addition, for a seven-member Board or Commission, a board action must be adopted by an affirmative vote of four members. Based on our review of the meeting minutes from January 2009 to January 2010 and our review of selected HLC



meeting video recordings we found that the HLC members complied with the requirements for meeting quorum and actions.

In addition, HLC members are consistently complying with the City Code requirement for meetings that extend beyond 10 pm. The City Code states that a Board or Commission meeting may not extend beyond 10 pm, unless the Board or Commission members vote to continue. Based on our review of the minutes and video recordings, we noted that the HLC members complied with this requirement.

**HLC members are not consistently complying with the City Code requirement that they sign in and indicate whether they have a conflict of interest at each meeting.**

The City Code requires that all HLC members, at each Commission meeting, sign an attendance sheet and either indicate that they have no conflict of interest related to any item on the agenda or note the number of an agenda item for which they have a conflict of interest. From January 2009 to January 2010, we found evidence of the sign-in sheet being used for only 3 out of 13 regular Commission meetings. The Historic Preservation Office (HPO) staff are responsible for ensuring that this sign-in sheet is properly completed. However, HPO staff indicated that they were not aware of this requirement. The inconsistency in tracking the HLC members' conflict of interest declarations may potentially result in members voting on those issues for which they may have a conflict of interest, which may lead to legal challenges.

**The HLC did not adopt Commission bylaws, as required by City Code, in a timely manner.** The City Code requires that all City Boards and Commissions adopt the City's standard bylaws for Boards and Commissions not later than December 31, 2008. The HLC amended the City's standard bylaws, which were presented to and partially approved by the Audit and Finance Committee in September 2008. However, the HLC did not formally adopt the amended bylaws until the February 2010 regular Commission meeting. Based on our interviews and a review of the meeting discussion for the Commission's February 2010 regular meeting, causal factors include a general lack of guidance from the HPO staff regarding the procedures and steps that had to be followed by the Commission members.

### **FINDING 3: Historic Landmark Commission members are not complying with the City Code requirements for annual reports and work plan reviews.**

The City Code states that periodically the Audit and Finance Committee will designate Boards and Commissions to conduct an annual review, complete a work plan, and prepare an annual review report. The annual review includes determining the Board or Commission's compliance with its mission as well as soliciting and recording comments from the public and staff. The annual review includes an analysis of the Board or Commission's past performance and the work plan includes goals and objectives as well as proposed activities for the following year. Although the HLC was required to conduct a review and submit an annual report for 2007 and 2008 and a work plan for 2008 and 2009, it has not done so.

Based on our interviews with HLC members, the City Clerk, and HPO staff, there is a general lack of clarity regarding roles and responsibilities of the key parties, especially regarding roles of the HLC members and HPO staff in the preparation of the annual reports. In addition, a lack of consequences for not complying with this requirement may contribute to the HLC's non-compliance.

Without an annual review, an annual report, and a work plan, the City Council as well as the HLC members may not be able to determine:

- if the HLC is complying with its mission,
- whether the HLC is achieving its objectives and goals,
- what objectives and goals the HLC members should achieve in the future,
- if the HLC should continue in operation,
- if the HLC's functions should be modified, or
- whether some of the functions should be transferred to another Board or Commission.

### **FINDING 4: HLC staff liaisons are not providing adequate support to HLC members to assist them in carrying out their duties.**

The HLC relies on receiving administrative services and support from the HPO, the City Clerk, and the City Law Department to properly perform its duties. Without sufficient support from these entities, HLC members may not be able to comply with the regulations guiding their Board's activities and may potentially make wrong or uninformed decisions, which may lead to legal challenges and waste.

The HPO is required to provide the following administrative and support services for the HLC:

- provide guidance to the HLC members on regulation and City policy requirements;
- compile the agendas, maintain minutes, and track attendance information for the HLC meetings; and
- ensure the HLC complies with the annual review and work plan requirement, when applicable.

HPO staff and the HLC members noted that there were instances when information packets were delivered to HLC members either the evening before or on the actual day of HLC meetings. Based on interviews, HPO management indicated that these packages should normally be delivered at least two days before the HLC meeting. Late delivery of this information may lead to HLC members voting on issues without sufficient knowledge, especially for cases that involve demolition permit applications because these cases have a time constraint and generally cannot be deferred. Based on our survey of support staff for 12 other City Boards and Commissions, staff delivers supporting documentation to their respective Board or Commission an average of 3.8 days prior to meetings. HPO staff and the HLC members indicated that the cause of this delay is mainly a lack of sufficient staffing within the HPO.

Texas Local Government Code and the City Code prohibit local public officials from voting on issues where they have a conflict of interest. Public officials who vote on issues where they have a conflict of interest may expose the City to legal challenges. As discussed in Finding 2 above, HPO staff have not been consistently providing the sign-in sheets, a control which would help ensure HLC members' compliance with this Code requirement.

Because the HLC has some sovereign responsibilities, they are considered a sovereign board. Members of a sovereign board are subject to a State law that requires Board members to recuse themselves when they have a "substantial interest" in a person or entity that would be affected by a vote of the Board and to file a notarized affidavit with the City Clerk before the Board votes on the item with which a member has a conflict. Through our interviews with the HLC members, we noted that the members did not know that the HLC is a sovereign board. As such, they were not aware of their responsibilities as members of a sovereign board. Although we saw evidence of member recusals in the meeting minutes, none of the Board members filed an affidavit with the City Clerk.

HPO staff have not been consistently presenting the meeting minutes to the HLC for approval. We noted that in January 2010 the Commission had not received minutes for the months from September 2009 to December 2009. During the HLC's regular meeting for the month of February 2010, the HPO staff presented all the minutes for the period from January 2009 to January 2010 to the Commission for approval. This included approving new minutes for September to December 2009 and revised minutes for January to August 2009 due to some inconsistencies in the initial minutes presented to and approved by the Commission members. Not having timely access to such information may cause a delay in required annual reporting obligations. In addition, due to the time that may have elapsed between the date when the meeting was held and the date when the minutes are presented, there is a potential risk that the Commission members may not be able to verify that the minutes reflect what happened in the meetings.

As discussed in Finding 2 above, due to a lack of sufficient guidance from the HPO staff, the HLC members did not comply with the City Code requirement for the adoption of the Commission's bylaws.



## **Recommendations**

**To ensure that the Historic Landmark Commission complies with regulations for City Boards and to mitigate the risk of legal challenges:**

01. The Director of the Planning and Development Review Department should ensure that Historic Preservation Office staff are trained on code requirements for Boards and Commissions and monitored to ensure that they provide sufficient guidance to Historic Landmark Commission members.

**MANAGEMENT RESPONSE: Concur**

Historic Preservation Office staff will work to ensure that Historic Landmark Commission members are training as required and are provided sufficient guidance on code requirements through training of staff and weekly HPO staff meetings, coordination with the Law Department and the City Clerk's Office, and better communication/coordination with the HLC on the code requirements.

02. The Chair of the Historic Landmark Commission should ensure that the Commission, with the support of Historic Preservation Office staff, prepares an annual report and work plan as required by the City Code.

**MANAGEMENT RESPONSE: Concur**

The Historic Preservation Office staff will work with the Historic Landmark Commission Chair to prepare a work plan for this year that will be based on the outcomes of the February 2010 and December 2009 work sessions and the Historic Preservation Office will present for the HLC's approval an annual report.

## **Other Matters: We identified one issue related to the Historic Preservation Office that may require further consideration.**

First, as discussed in the background section, the HPO staff provide administrative and support services for the HLC. Based on our interviews with the HPO management and staff there seems to be a lack of coordination among HPO staff, which may potentially impede their ability to effectively serve the Historic Landmark Commission. Without quality services from the support staff the HLC members may potentially make uninformed decisions which may lead to legal challenges. HPO management is aware of these problems and has communicated a plan to address them.

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**APPENDIX A**  
**MANAGEMENT RESPONSE**





## MEMORANDUM

**To:** Kenneth J. Mory, City Auditor  
Henry Katumwa, Auditor in Charge  
Office of the City Auditor

**From:** Greg Guernsey, Director  
Planning and Development Review Department

**Date:** March 18, 2010

**Subject:** Historic Landmark Commission Audit

Enclosed please find our response to the subject audit. As suggested, we have used the Action Plan template to address each audit recommendation.

The Audit Results section raises the issue of cooperation among Historic Preservation Office (HPO) staff possibly affecting the level of service to the Historic Landmark Commission. Management acknowledges that improvements in this area should be made. Management has initiated a weekly HPO staff meeting to improve communication among staff members. Also, management is working with HPO staff on reviewing job responsibilities and will begin preparing a training manual. Management has been attending the Commission's meetings and consulting with the Chair after the meeting. In addition, management may seek the assistance of the Organization Development Division of the Human Resources Department.

We trust this submittal provides you the necessary information to complete the process. If you have any questions or need additional information, please do not hesitate to contact us.

  
Greg Guernsey, Director  
Planning and Development Review Department

Approved by: Sue Edwards, Assistant City Manager

Signature:  Date: 3/22/2010

Attachment: Action Plan

GG:SE jr

LIMBACHER & GODFREY  
ARCHITECTS

March 19, 2010

Mr. Jerry Rusthoven  
City of Austin  
City Historic Preservation Office  
Planning and Development Review Department  
PO Box 1088  
Austin, Texas 78767

RE: Preparation of Annual Report and Work Plan  
Historic Landmark Commission  
City of Austin

Dear Jerry:

The members of the City of Austin Historic Landmark Commission stand ready to assist and work with the City Historic Preservation Office staff to prepare annual report and work plan documents as might be needed for administrative and forecasting requirements. We recently completed a Commission retreat in which we set goals and priorities for the coming year. This information is intended to guide the Commission and the staff in activities through the year, and would be appropriate to incorporate in to an annual report and work plan document.

Please let me know if you have questions or need further information.

Sincerely,



Laurie Limbacher, Chair  
City of Austin Historic Landmark Commission

cc: Historic Landmark Commission

Architecture • Planning • Historic Preservation

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# **ACTION PLAN** **Historic Landmark Commission Audit**

Rec #	Recommendation Text	Concurrence	Proposed Strategies for Implementation	Status of Strategies	Responsible Person/ Phone Number	Proposed Implementation Date
01	The Director of the Planning and Development Review Department should ensure that Historic Preservation Office staff is trained on code requirements and monitored to ensure that they provide sufficient guidance to Historic Landmark Commission members.	Concur	Historic Preservation Office staff will work to ensure that Historic Landmark Commission members are trained as required and are provided sufficient guidance on code requirements through training of staff and weekly HPO staff meetings, coordination with the Law Dept and City Clerk's Office and better communication/coordination with the HLC on the code requirements.	Underway	Jerry Rusthoven, Current Planning Manager, 974-3207	Ongoing
02	The Chair of the Historic Landmark Commission should ensure that the Commission, with the support of Historic Preservation Office staff, prepares an annual report and work plan as required by the City Code.	Concur	The Historic Preservation Office staff will work with the Historic Landmark Commission Chair to prepare a work plan for this year that will be based on the outcomes of the Feb 2010 and Dec 2009 work sessions and the Historic Preservation Office will present for the HLC's approval an annual report.	Underway	Jerry Rusthoven, Current Planning Manager, 974-3207	The work plan will be presented for the Historic Landmark Commission's approval at its May 2010 meeting.

Office of the City Auditor  
3/19/2010