

## **CITY OF AUSTIN ETHICS REVIEW COMMISSION**

**FRED L. MCGHEE**

Complainant

v.

**MARY JO GALINDO,  
DAVID WHITWORTH,  
MADELINE CLITES,  
TERRI MYERS,  
ARIF PANJU,  
ALEXANDER PAPAVALILIOU,  
EMILY REED,  
BLAKE TOLLETT, AND  
MICHELLE TREVINO**  
Respondents.

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**Complaint No. 20151120  
(Amended)**

### **ORDER ON PRELIMINARY HEARINGS**

#### **I. PROCEDURAL HISTORY**

On November 20, 2015, Fred L. McGhee (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a sworn complaint (“the Original Complaint”) against the City of Austin Historic Landmark Commission (“HLC”). On December 8, 2015, Complainant submitted to the City Clerk nine amended complaints (“the Amended Complaints”) against the following nine individual members of the HLC: Mary Jo Galindo, David Whitworth, Madeline Clites, Terri Myers, Arif Panju, Alexander Papavasiliou, Emily Reed, Blake Tollett, and Michelle Trevino (“Respondents”). On that date, the City Clerk sent a copy of the Amended Complaints and a notice of filing to the City Attorney, the Ethics Review Commission (“the Commission”), Complainant, and Respondents.



On December 30, 2015, Commission Executive Liaison and City of Austin Assistant City Attorney Cynthia Tom issued nine Notices of Preliminary Hearing to Complainant and Respondents, setting the Original Complaint and Amended Complaints for preliminary hearing at the January 13, 2016 regular meeting of the Commission, and advising Respondents and Complainant of procedures for the preliminary hearings.

## **II. FINDINGS OF FACT**

1. Respondents are members of the HLC.
2. Complainant alleges that Respondents violated Section 2-1-44 of City Code (City Boards: Meeting Procedures) and Section 2-7-1(A) of City Code (Ethics and Financial Disclosure: Declaration of Policy) on August 24, 2015, and September 28, 2015.
3. Complainant appeared in person at the preliminary hearings and made statements under oath.
4. Respondents David Whitworth, Madeline Clites, Terri Myers, Arif Panju, Alexander Papavasiliou, Emily Reed, Blake Tollett, and Michelle Trevino each appeared in person at the preliminary hearings and made statements under oath.
5. Respondent Mary Jo Galindo did not appear at the preliminary hearing.
6. At the preliminary hearing, Respondent Blake Tollett stated that he did not attend the August 24, 2015, HLC meeting.
7. At the preliminary hearing, Respondent Michelle Trevino stated that she is Secretary of the Interior qualified for architectural history.
8. At the preliminary hearing, Respondent Arif Panju stated that he voted against the historic designation for Rosewood Courts at the HLC meeting. He also stated that he



believed that one of the allegations should be dismissed for lack of jurisdiction and that the other allegation involved a policy determination not rising to the level of an ethics violation.

9. At the preliminary hearing, Respondent Emily Reed stated that she voted in favor of the historic designation for Rosewood Courts at the HLC meeting and that in her professional opinion, Rosewood Courts met the criteria for designation.
10. At the preliminary hearing, Respondent Madeline Clites stated that she recused herself from the HLC vote relating to historic designation for Rosewood Courts at the August 24, 2015 HLC meeting.
11. At the preliminary hearing, Respondent David Whitworth stated his opinion that Rosewood Courts would come back before the HLC if a demolition permit were pulled in the future.
12. At the preliminary hearing, Respondent Alexander Papavasiliou stated that he did not participate in the HLC vote relating to historic designation for Rosewood Courts on August 24, 2015.
13. At the preliminary hearing, Respondent Terri Myers stated that she voted in favor of the historic designation for Rosewood Courts and that she had been a historic preservation professional for 30 years. She also submitted a copy of her resume as evidence at the preliminary hearing.



### III. CONCLUSIONS OF LAW

1. The January 13, 2016 regular meeting of the Commission and the preliminary hearings were properly noticed in accordance with Chapter 2-7 of the City Code (Ethics and Financial Disclosure) and the Texas Open Meetings Act.
2. The Commission has jurisdiction over complaints alleging violations of Section 2-1-24 of the City Code (Conflict of Interest and Recusal); Chapter 2-2 of the City Code (The Austin Fair Campaign Chapter); 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 Chapter 4-8 of the City Code (Regulation of Lobbyists).
3. The Commission does not have general jurisdiction over allegations of violations of other parts of the City Code and City Charter.
4. The Commission does not have jurisdiction over Section 2-1-44 of City Code.
5. The Original Complaint and Amended Complaints were filed with the City Clerk, sworn to by Complainant, and identify the sections of the City Code alleged to have been violated, as required by Section 2-7-41 of the City Code.
6. 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.
7. Section 2-7-1(A) of City Code sets forth purely aspirational goals which are not capable of being violated.



#### **IV. DETERMINATIONS OF THE ETHICS REVIEW COMMISSION**

1. The Commission determines that reasonable grounds do not exist to believe that a violation of Section 2-7-1(A), a provision within the jurisdiction of the Commission, has occurred as a result of the actions or omissions alleged in the Original Complaint and Amended Complaints because the Commission determines that Section 2-7-1(A) sets forth purely aspirational goals, and, therefore, Section 2-7-1(A) is not capable of being violated.
2. The Commission determines that it lacks subject matter jurisdiction over Section 2-1-44 of City Code; therefore, reasonable grounds do not exist to believe that a violation of a provision within the jurisdiction of the Commission has occurred with regard to the allegations of violation of that section as set forth in the Original Complaint and Amended Complaints.

#### **V. REFERRAL/NON-REFERRAL TO FINAL HEARING**

1. The Original Complaint and Amended Complaints are DISMISSED.
2. The Commission will not set the Original Complaint or Amended Complaints for final hearing.



ORDERED as of this 13th day of January, 2016.

  
Matthew Lamon  
Ethics Review Commission Member

