

CITY OF AUSTIN ETHICS REVIEW COMMISSION

Thomas Clark
Complainant

v.

Sabino Renteria
Respondent.

§
§
§
§
§
§
§

Complaint No. 20160218
(Re-filed)

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On February 18, 2016, Thomas Clark (“Complainant”) submitted to the Austin City Clerk (“City Clerk”) a Sworn Complaint (“the Complaint”) against Councilmember Sabino Renteria (“Respondent”). On February 19, 2016, 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 February 29, 2016, Commission Executive Liaison and City of Austin Assistant City Attorney Cynthia Tom (“Tom”) issued a Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for March 9, 2016, and advising the Respondent and Complainant of procedures for the Preliminary Hearing. On March 18, 2016, Tom issued a Revised Notice of Preliminary Hearing resetting the Preliminary Hearing to April 13, 2016.

On April 8, 2016, Commission Staff Liaison Jessica Aranda posted a Notice of Regular Meeting and Agenda for the Commission, which included the April 13, 2016, preliminary hearing on the Complaint.



On April 12, 2016, the Complainant filed an amended complaint, and on that date the City Clerk sent a copy of the amended Complaint and a notice of filing to the City Attorney, the Commission, the Complainant, and the Respondent.

At the April 13, 2016, preliminary hearing the Commission dismissed the complaint, pursuant to Section 2-7-44 of the City Code, determining that reasonable grounds did not exist to believe that a violation of a provision within the jurisdiction of the Commission had occurred as a result of the actions or omissions as alleged in the Complaint because the Complaint alleged violations of Code provisions that do not apply to city councilmembers. Pursuant to Section 2-7-44 of the City Code the Commission afforded the Complainant the opportunity to revise and resubmit the Complaint within 10 business days of April 13, 2016.

On April 22, 2016, the Complainant submitted to the Austin City Clerk (“City Clerk”) a re-filed Sworn Complaint (“the Complaint”) against Councilmember Sabino Renteria (“Respondent”). On April 25, 2016, 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 May 2, 2016, Tom issued a Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for May 11, 2016, and advising the Respondent and Complainant of procedures for the Preliminary Hearing.

On May 6, 2016, Tom posted a Notice of Regular Meeting and Agenda for the Commission, which included the May 11, 2016, preliminary hearing on the Complaint.



II. FINDINGS OF FACT

1. Respondent is an Austin City Council member.
2. Complainant alleges that Respondent, in violation of Chapter 2-7, Sections 2-7-63 and 2-7-64, Austin City Code, voted, spoke, and held policy making meetings related to regulating short-term rental properties in the City of Austin. The Complaint cited several other provisions of City Code, but during the Preliminary Hearing Complainant acknowledged they were cited in error and withdrew any allegations under those provisions.
3. Complainant and Respondent each appeared at the Preliminary Hearing and made statements under oath.
4. The Complaint included an exhibit that set forth various dates on which Respondent, as a city councilmember, participated in discussions and voting related to short-term rental regulations.
5. At the hearing Complainant provided evidence that the Respondent owned and operated a Type 1 short-term rental as late as the first three months of 2015.
6. Respondent acknowledged that he participated in discussions and voting related to short-term rentals on the dates alleged, and that he owned the property made the basis of the allegations.



7. Respondent acknowledged that the property at issue had a value in excess of \$5,000.
8. Respondent provided evidence that he no longer offered his property as a short-term rental on the dates he participated in votes or discussions related to short-term rentals.
9. ERC members asked questions of both the Complainant and Respondent.
10. The Commission finds that the Respondent owned real property valued at more than \$5,000 on the dates made the subject of the Complaint.
11. The Commission finds that on the dates alleged in the Complaint, Respondent participated in discussions and voting that affected the property made the subject of the Complaint.

III. CONCLUSIONS OF LAW

1. The May 11, 2016, meeting of the Commission and the Preliminary Hearing are 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.
2. The Commission has jurisdiction over complaints alleging violations of Chapter 2-2 of the City Code (Campaign Finance), 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), and Section 2-1-24 of the City Code (Conflict of Interest and Recusal).

3. The Commission does not have general jurisdiction over allegations of violations of other parts of the City Code and City Charter.
4. The Complaint, as re-filed on April 22, 2016, was filed with the City Clerk, sworn to by Complainant, and identified City Code provisions alleged to have been violated and the dates of the alleged violations.
5. The Commission has jurisdiction over the City Code provisions as alleged in the Complaint.
6. Under Section 2-7-44 of the City Code, 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. If the Commission does not determine that reasonable grounds exist to believe that a violation has occurred the complaint shall be dismissed.
7. The Complaint as re-filed alleged that the Respondent's participation in discussions and voting related to short-term rentals violated Sections 2-7-63 and 2-7-64, City Code, which state (in relevant part):

§ 2-7-63 - PROHIBITION ON CONFLICT OF INTEREST

(A) A City official or employee may not participate in a vote or decision on a matter affecting a natural person, entity, or property in which the official or employee has a substantial interest; provided, however, that this provision shall not prohibit any member of the city council from participating in a discussion



relating to a petition certified to the city council by the city clerk which petition seeks the recall of said member of the city council.

(C) Where the interest of a City official or employee in the subject matter of a vote or decision is remote or incidental, the City official or employee may participate in the vote or decision and need not disclose the interest.

§ 2-7-64 - DISCLOSURE OF CONFLICT OF INTEREST

(A) A City official shall disclose the existence of any substantial interest he may have in a natural person, entity or property which would be affected by a vote or decision of the body of which the City official is a member or that he serves as a corporate officer or member of the board of directors of a nonprofit entity for which a vote or decision regarding funding by or through the City is being considered.

(B) To comply with this section, a councilmember or unsalaried City official, prior to the vote or decision, either shall file an affidavit as required by Chapter 171 (*Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments*) of the Local Government Code or, if not so required, shall publicly disclose in the official records of the body the nature and extent of such interest.

8. Section 2-7-2(6) of the City Code defines "entity" to mean:

a sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, receivership, trust, or any other entity recognized by law through which business may be conducted, but not include a governmental body.
9. Section 2-7-2(4) of the City Code defines "decision" to include "discussions or deliberations of the council, board, or commission which can or may lead to a vote or formal action by that body.
10. Section 2-7-2(1) of the City Code defines "affected" to mean (in relevant part):



reasonably likely to be subject to a direct economic effect or consequence, either positive or negative, as a result of the vote or decision in question. For instance, a person or entity owning real property, entering into a contract with the City, or seeking a permit or franchise is "affected" by votes or decisions such as zoning of the property, approval of the contract, or granting of the permit.

11. Section 2-7-2(10) of the City Code defines "substantial interest" to mean (in relevant part):

an interest in another person or an entity if: the interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000 or more of the equity or market value of the entity; or funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000 in salary, bonuses, commissions or professional fees or \$20,000 in payment; for goods, products or nonprofessional services, or 10 percent of the person's gross income during that period, whichever is less

12. Section 2-7-2(11) of the City Code defines "substantial interest in real property" to mean:

an interest in real property which is an equitable or legal ownership with a market value of \$5,000 or more.

13. Section 2-7-2(9) of the City Code defines "remote interest" to mean:

an interest of a person or entity, including a City official or employee, who would be affected in the same way as the general public. The interest of a councilmember in the property tax rate, general City fees, City utility charges, or a comprehensive zoning ordinance or similar decisions is incidental to the extent that the councilmember would be affected in common with the general public.

14. Respondent is a City Official as defined in Chapter 2-7, City Code.



15. The Commission concludes that on the dates alleged, Respondent participated in discussions and voting related to short-term rental regulations that were reasonably likely to result in a direct economic effect or consequence, either positive or negative on the Respondent or his property.
16. The Commission concludes that although Respondent did not conduct a short-term rental business at the time he participated in discussions and voting related to short-term rental regulations, he nevertheless had a substantial interest in real property that was affected by his discussions and voting.
17. The Commission concludes that Respondent's interest was a remote interest because it was affected in the same way as the general public.
18. The Commission concludes that because Respondent's interest was remote, he did not violate Section 2-7-63 of the City Code and was not required to file the affidavit required by Section 2-7-64 of the City Code.

IV. DETERMINATIONS OF THE ETHICS REVIEW COMMISSION

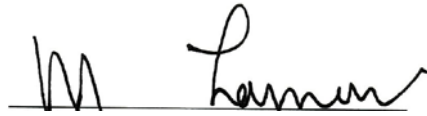
1. The Commission determines that reasonable grounds do not exist to believe that a violation of a provision within the jurisdiction of the Commission has occurred as a result of the actions or omissions as alleged in the Complaint.
2. The Commission will not set the Complaint for final hearing.

V. ACTIONS OF THE ETHICS REVIEW COMMISSION

The Complaint is DISMISSED.



ORDERED this 11th day of May, 2016.

A handwritten signature in black ink, appearing to read "M Lamon", written over a horizontal line.

Matthew Lamon
Vice-Chair, Ethics Review Commission

