



## **Annual Internal Review**

### **ETHICS REVIEW COMMISSION**

**This report covers the time period of 7/01/2019 to 6/30/2020**

**The Board/Commission mission statement is set forth in the following provisions of the City Code:**

#### **§ 2-1-145 - ETHICS REVIEW COMMISSION.**

The Ethics Review Commission has duties and responsibilities established by Chapter 2-2 (Campaign Finance) and Chapter 2-7 (Ethics and Financial Disclosure).

#### **§ 2-2-65 OTHER CONSIDERATIONS FOR CAMPAIGN CONTRACT.**

- (A) A candidate who signs a campaign contract must participate in a series of candidate forums, whether or not the candidate qualifies for funds.
- (B) The Ethics Review Commission shall produce not fewer than three forums for each contested race as follows:
  - (1) one forum must air on public access television; and
  - (2) other forums may be produced and made available to the public by radio, broadcast, publication on the Internet, or other means approved by the commission.
- (C) The City shall make recordings of audio or video forums available to the public at all branches of the City library.
- (D) The City may purchase advertising promoting the candidate forums.
- (E) The Ethics Review Commission shall establish equitable guidelines to coordinate and produce the candidate forums.

#### **§ 2-7-26 FUNCTIONS.**

The Ethics Review Commission has jurisdiction over this chapter, Section 2-1-24 (Conflict of Interest and Recusal), Chapter 2-2 (Campaign Finance), Chapter 4-8 (Regulation of Lobbyists), and Article III, Section 8, of the City Charter (Limits on Campaign Contributions and Expenditures). The commission shall hear and rule on sworn complaints alleging violations of the provisions within the commission's jurisdiction. The city manager shall provide funding for all necessary and reasonable functions of the commission in fulfilling its duties.

**§ 2-7-30 DUTIES.**

- (A) The Ethics Review Commission shall, in addition to its other duties:
- (1) prescribe forms for reports, statements, notices, and other documents required by the provisions within the commission's jurisdiction;
  - (2) prepare and publish materials explaining the duties of individuals subject to the provisions within the commission's jurisdiction;
  - (3) accept and file any information voluntarily supplied that exceeds the requirements of the provisions within the commission's jurisdiction;
  - (4) preserve statements and reports filed with the commission for a period of five years from the date of receipt;
  - (5) review the provisions within the commission's jurisdiction and make appropriate recommendations to the city council concerning the provisions within the commission's jurisdiction, and perform an annual review and evaluation of the dollar limits established in Chapter 2-2 (Campaign Finance) and make recommendations to the city council as to those limits;
  - (6) conduct hearings in accordance with the provisions of this chapter and the commission's rules on sworn complaints alleging violations of the provisions within the commission's jurisdiction;
  - (7) schedule and oversee the forums among candidates in City elections provided for in Chapter 2-2 (Campaign Finance).
- (B) The commission may:
- (1) prepare reports and studies to advance the purposes of the provisions within the commission's jurisdiction;
  - (2) request the city council and city manager to provide such assistance as it may require in the discharge of its duties; and
  - (3) review statements and reports filed under provisions within the commission's jurisdiction in order to obtain compliance with the provisions.

**ARTICLE 6. - ANTI-LOBBYING AND PROCUREMENT**

**SECTION 2-7-109 ENFORCEMENT [Appeals of Anti-Lobbying Disqualifications]**

- (A) A respondent that has been disqualified pursuant to Section 2-7-110(A) may appeal such disqualification to a subcommittee that is less than a quorum of the Ethics Review Commission established in Chapter 2-7, Article 2 (Ethics Review Commission), whose decision on appeal shall be final and binding. Any appeal must be filed in the manner prescribed by the Ethics Review Commission within 5 calendar days of the notice given by the purchasing officer pursuant to Section 2-7-110(B).

1. Describe the board's actions supporting its mission during the previous calendar year. Address all elements of the board's mission statement as provided in the relevant sections of the City Code.

The Ethics Review Commission engaged in the following activities during the review period:

**July 2019**

The Commission's regular meeting on July 10, 2019 was cancelled.

**August 2019**

The Commission held a regular meeting on August 14, 2019.

Preliminary Hearing: In regard to a complaint filed by Matthew Mackowiak against Natasha Harper-Madison, which alleged violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-7 (Commencement of Campaign Period), the Chair advised the Commission of granting respondent's postponement request. The Commission voted to schedule the preliminary hearing on the complaint on September 18, 2019.

Commission Rules: The Commission revised its rules in regard to citizen communications as follows:

- (1) Moving general citizen communications to the end of the agenda;
- (2) Permitting citizen communications at the beginning of each agenda item on that agenda item;
- (3) Setting a time limit for citizen communications of two minutes per speaker on the agenda item, except that the time limit is doubled to four minutes if the member of the public needs translation or an accommodation for a disability;
- (4) Requiring a person to sign in on a sign-up sheet before speaking on an agenda item;
- (5) Providing notice to speakers that if an agenda item is not identified by the speaker on the sign-in sheet, the speaker will be called to speak during the general citizen communications item on the agenda.

Working groups: Commissioner McCormick, Chair Kahle, and Commissioner Villalobos volunteered to serve on a working group on council candidate forums for the 2020 elections.

**September 2019**

The Commission held a regular meeting on September 11, 2019.

Working Groups:

- a. The working group on city council candidate forums provided an update to the commission on the forums.
- b. The Commission established a working group of Commissioners Greenberg, Lerner, and Ohueri to consider: (i) Commission sanctions including effectiveness, past cases, and recommendations; and (ii) potential amendments to City Code, Chapter 2-7 (Ethics and

Financial Disclosure).

- c. The Commission established a working group of Vice-Chair Soberon, Secretary Gober, and Commissioner Lari to consider: (i) Commission procedures including effectiveness, past cases, and recommendations; (ii) Scope of work of the Commission (powers, duties, and obligations), including effectiveness, past cases, and recommendations; (iii) potential amendments to the Rules of the Ethics Review Commission; and (iv) best practices for city attorney opinions including effectiveness, past cases, and recommendations.

The special-called meeting scheduled for September 18, 2019 was cancelled.

### **October 2019**

The Commission held a regular meeting on October 9, 2019.

Preliminary hearing: Due to a recusal, the preliminary hearing was postponed for lack of a quorum of Commission members in regard to the complaint filed by Matthew Mackowiak against Natasha Harper-Madison, which alleged violation of City Code Chapter 2-2 (Campaign Finance), Section 2-2-7 (Commencement of Campaign Period).

Jurisdictional Determination: The Commission considered a complaint filed by Carlos Leon against Rebecca Austen, which alleged violation of City Code, Chapter 2-1 (City Boards), Sections 2-1-2, 2-1-3, 2-1-21, 2-1-24, 2-1-43, and 2-1-48. The Commission confirmed Chair Kahle's initial finding that the Ethics Review Commission lacks jurisdiction over the complaint as submitted by Mr. Leon.

### **November 2019**

The commission held a regular meeting on November 13, 2019.

Preliminary Hearing: The Commission held a preliminary hearing on a complaint filed by Robert Mark Littlefield against Unconventional Austin SPAC, which alleged violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-32 (Reporting of Direct Campaign Expenditures). The Commission determined that reasonable grounds exist to believe that a violation within the Commission's jurisdiction did occur and to proceed to a final hearing. The Commission requested records and witnesses for the final hearing.

The Commission's 2020 regular meeting schedule was approved.

**Campaign Finance:** The Commission considered the dollar limits established in Chapter 2-2 (Campaign Finance) and took no action on this item.

**Candidate Brochure:** The Commission adopted non-substantive revisions to the Candidate and Officeholder Campaign Finance Brochure.

**Rules for Citizen Communications and Public Testimony:** The Commission adopted the following rules for citizen communications:

- (1) General citizen communications will follow the "Call to Order" on the agenda, but will

- not be a numbered agenda item;
- (2) General citizen communications will be limited to 5 speakers;
  - (3) Citizen communications on a specific agenda item will be permitted at the beginning of each agenda item on that agenda item, except for an item posted as a briefing;
  - (4) The time limit for general citizen communications and citizen communications on an agenda item will be limited to three minutes per speaker, except that the time limit will be doubled to six minutes if the member of the public needs translation or an accommodation for a disability;
  - (5) A sign-up sheet will be required for a person to speak on an agenda item and during general citizen communications.

## **December 2019**

The Commission held a regular meeting on December 11, 2019. (Commissioners Ohueri and Ryan recused themselves from participation on the complaint by Matthew Mackowiak against Natasha Harper-Madison. Chair Kahle recused herself from participation on the item related to a complaint by Robert Mark Littlefield against Unconventional Austin SPAC.)

Preliminary Hearing: A preliminary hearing was held in regard to a complaint filed by Matthew Mackowiak against Natasha Harper-Madison, which alleged violation of City Code Chapter 2-2 (Campaign Finance), Section 2-2-7 (Commencement of Campaign Period). After admissions by the Respondent that one or more violations occurred, the Commission determined that the appropriate sanction was a letter of admonition under Code Section 2-7-48. The Commission also voted to recommend that respondent file corrected campaign finance reports with the City Clerk for the January 2019 and July 2019 filings.

A letter of admonition was issued to Natasha Harper-Madison on December 18, 2019.

Jurisdictional Determination: The Commission considered a complaint filed by Mackenzie Kelly against Jimmy Flannigan, which alleged a violation of City Code Section 2-1-24 (Conflict of Interest and Recusal). The Commission confirmed Chair Kahle's initial finding that the Ethics Review Commission lacks jurisdiction over the complaint as submitted by Ms. Kelly.

Final Hearing Scheduling and Evidentiary Matters: In regard to a complaint filed by Robert Mark Littlefield against Unconventional Austin SPAC, which alleged violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-32 (Reporting of Direct Campaign Expenditures), no final hearing took place due to the chair's granting of a postponement request. Commissioners deliberated on scheduling and evidentiary issues. On a unanimous vote, the Commission voted to request records and information by sworn affidavit or declaration from a witness who would be unavailable at the final hearing.

## **January 2020**

The Commission meeting for January 8, 2020 was cancelled.

## **February 2020**

The Commission held a regular meeting on February 12, 2020. (Chair Kahle recused herself from participation in regard to the complaints by Robert Mark Littlefield against Unconventional Austin SPAC.)

Preliminary Hearing: A preliminary hearing was held in regard to three complaints filed by Robert Mark Littlefield against Unconventional Austin SPAC, which complaints alleged violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-33 (Disclosure Statement Required). After admissions by the Respondent that one or more violations occurred, the Commission determined that the appropriate sanction was a letter of reprimand under Code Section 2-7-48(C)(3).

A letter of reprimand was issued to Unconventional Austin SPAC on February 26, 2020.

Final Hearing: A final hearing was held in regard to a complaint filed by Robert Mark Littlefield against Unconventional Austin SPAC, which alleged violation of City Code Chapter 2-2 (Campaign Finance) Section 2-2-32 (Reporting of Direct Campaign Expenditures). At the conclusion of the final hearing, the Commission voted to dismiss the complaint.

## **March 2020**

The Commission meeting for March 11, 2020 was cancelled.

## **April 2020**

The Commission meeting for April 8, 2020 was cancelled.

## **May 2020**

The Commission meeting for May 13, 2020 was cancelled.

## **June 2020**

The Commission held a regular meeting on June 10, 2020.

Officer Elections: Luis Soberon was elected as chair; J. Michael Ohueri was elected as vice-chair. Tray Gober was reelected as secretary of the Commission.

City staff gave an update of city council candidate forums.

Chair Kahle made a motion that the 2020 candidate forum schedule posted as backup for this meeting be approved by the Commission and that the Commission also approve holding the candidate forums virtually if necessitated by limitations on social gatherings, in the Mayor's emergency orders (or Travis County Judge's emergency orders whichever applies to the venue); by recommendation of the Public Health Director, Dr. Escott; or by lack of availability of a location for the event as a result of the COVID-19 Pandemic or other public health or safety

emergency.

Commissioner Greenberg made a motion to amend Chair Kahle's motion to make attending the candidate forums virtually an option regardless of whether an in-person candidate forum takes place. The motion to amend was seconded by Commissioner Danburg and passed on a unanimous vote of 10-0 of the members in attendance. Voting in favor: Chair Kahle, Vice-Chair Soberon, Secretary Gober, and Commissioners Danburg, Greenberg, Lari, Lerner, McCormick, Ohueri, and Ryan. Commissioner Villalobos was absent.

2020 candidate forum schedule posted as backup for this meeting and that the Commission also approve holding the candidate forums virtually if necessitated by limitations on social gatherings and that an option for persons to attend virtually be made available regardless of whether a candidate forum is held in-person or virtually so that persons who are at high-risk or otherwise may attend virtually. The motion passed on a unanimous vote of 10-0 by the members in attendance. Voting in favor: Chair Kahle, Vice-Chair Soberon, Secretary Gober, and Commissioners Danburg, Greenberg, Lari, Lerner, McCormick, Ohueri, and Ryan. Commissioner Villalobos was absent.

## **2. Determine if the board's actions throughout the year comply with the mission statement.**

For the reporting period of July 2019-June 2020, the Ethics Review Commission's activities complied with the Commission's mission, functions, and duties.

## **3. List the board's goals and objectives for the new calendar year (or next reporting period).**

The Ethics Review Commission will continue to meet its stated responsibilities as an independent ethics and compliance body, including but not limited to the following:

- Holding preliminary and final hearings regarding complaints within the Commission's jurisdiction.
- Sponsoring city council candidate forums in the fall of 2020 on the following dates:
  - District 2: Wednesday, September 16th at 6:00 p.m.
  - District 4: Wednesday, September 23rd at 6:00 p.m.
  - District 6: Wednesday, September 30th at 6:00 p.m.
  - District 7: Wednesday, October 7th at 6:00 p.m.
  - District 10: Tuesday, September 29th at 6:00 p.m.
  - If Runoff: Monday, November 30th at 6:00 p.m.

Forums may be viewed on ATXN.TV (ENG & SPA), cable TV channel 6, and AT&T U-Verse channel 99, or listened to on radio coverage on KAZI FM 88.7. Information available at: [AustinTexas.gov/Elections](https://www.austintexas.gov/#!/Elections) and at 3-1-1. Austin residents can e-mail questions for the forums to [forum@lwvaustin.org](mailto:forum@lwvaustin.org) or by calling 512/451-6710.

- Considering potential recommendations to Council for amending the City Code or Commission rules and procedures related to:
  - Commission sanctions.

- Scope of work of the Commission (powers, duties, and obligations).
  - Best practices for city attorney opinions entered into evidence.
  - Potential amendments to City Code, Chapter 2-7 (Ethics and Financial Disclosure) or Chapter 2-2 (Campaign Finance).
  - Potential amendments to the Rules of the Ethics Review Commission or Commission procedures.
- Working with the City's Equity Officer to evaluate racial injustice and how the Commission can be inclusive and operate more fairly and effectively in light of racial injustice.
  - Taking steps to ensure transparency in the open meeting process in consideration of individuals without internet access or other technology challenges for virtual viewing and participation.