

## ETHICS REVIEW COMMISSION

## MEETING MINUTES Wednesday, May 12, 2021

The Ethics Review Commission (“Commission”) convened in a regular meeting on Wednesday, May 12, 2021, Austin, Texas via Videoconference.

Chair Luis Soberon called the meeting to order at 6:06 p.m.

Commissioners in attendance: Chair Luis Soberon, Vice-Chair J. Michael Ohueri, and Commissioners Debra Danburg, Betsy Greenberg, Mary Kahle, Raafia Lari, and Donna Beth McCormick were present at roll call. Commissioner Nguyen Stanton joined the meeting after executive session.

Members absent: Secretary Robin Lerner. Commissioners not in attendance due to the necessity of completing boards and commissions training: Michael Lovins and Mikki Teneyuca.

City Staff in Attendance: Lynn Carter, Commission Executive Liaison & Assistant City Attorney and Meredith Mooney, Executive Assistant, Law Department.

### CITIZEN COMMUNICATION

Each person who signed up to speak prior to the meeting being called to order and who designated this item on which to speak, or who did not designate an agenda item on which to speak will be allowed three minutes to speak.

**Two speakers registered for citizen communication: Tiffany Washington spoke after the call to order; she spoke on item 1(c), which is the same as item 2(b). Chivas Watson spoke at the beginning of agenda item no. 2(b).**

### 1. EXECUTIVE SESSION

The Ethics Review Commission may announce it will go into Executive Session pursuant to Chapter 551 of the Texas Government Code to receive advice from legal counsel on any matters specifically listed on this agenda (Private Consultation with Attorney-Section 551.071).

- (a) A complaint filed by Joseph Cascino against Otto Swingler, which complaint alleges violations of City Code Chapter 2-2 (Campaign Finance) Sections 2-2-23 and 2-2-26.
- (b) Complaints filed by Mark Littlefield against Save Austin Now, which complaint alleges violations of City Code Chapter 2-2 (Campaign Finance) Sections 2-2-23 and 2-2-26.
- (c) A complaint filed by Olivia Overturf against Mayor Pro Tem Natasha Harper-Madison, which complaint alleges violation of City Code Chapter 2-7 (Ethics and Financial Disclosure) Section 2-7-62 (B).

**Vice-Chair Ohueri announced his recusal from item 2(b), which is the same as item 1(c) on the executive session agenda. The Commission went into executive session at 6:17 p.m. and the open meeting resumed at 7:11 p.m. Outside counsel, Steve Sheets, advised the Commission on items 1(b) and 1(c); Assistant City Attorney, Lynn Carter, advised the Commission on item 1(a).**

## **2. PRELIMINARY HEARING**

Discussion and possible action regarding the following:

- (a) A complaint filed by Joseph Cascino against Otto Swingler, which complaint alleges violations of City Code Chapter 2-2 (Campaign Finance) Sections 2-2-23 (Political Committees) and 2-2-26 (Filing Campaign Finance Report Data) of Chapter 2-2 (Campaign Finance).
- (b) A complaint filed by Olivia Overturf against Mayor Pro Tem Natasha Harper-Madison, which complaint alleges violation of City Code Chapter 2-7 (Ethics and Financial Disclosure) Section 2-7-62 (Standards of Conduct) subsection (B).

**Item 2(b) was taken up out of order: Complainant Olivia Overturf appeared. Respondent was not present. Outside counsel, Steve Sheets, appeared for the Commission in regard to this complaint; Executive Liaison and Assistant City Attorney, Lynn Carter assisted with procedural questions.**

**Complainant Overturf made a presentation during the preliminary hearing and Commissioners asked questions.**

**Commissioner Danburg made a motion to postpone the preliminary hearing, which was subsequently withdrawn. Commissioner Greenberg made a second motion to postpone item 2(b), which was seconded by Commissioner McCormick. The motion failed for lack of sufficient votes (0-6-1). There were no votes in favor. Voting against: Chair Soberon and Commissioners Greenberg, Kahle, Lari, McCormick, and Stanton. Abstaining: Commissioner Danburg. Vice-Chair Ohueri recused from this item. Secretary Lerner and Commissioners Lovins and Teneyuca were absent.**

**Chair Soberon made a motion to dismiss the complaint, because the conduct does not allege a violation of the provision alleged (City Code Section 2-7-62(B), and to allow the complainant two months to revise and resubmit the complaint. Commissioner Kahle seconded the motion. The motion failed on a lack of sufficient votes (5-2). Voting in favor: Chair Soberon and Commissioners Danburg, Kahle, Lari, and McCormick. Voting against: Commissioners Greenberg and Stanton. Commissioner Ohueri recused, and Secretary Lerner and Commissioners Lovins and Teneyuca were absent.**

**Commissioner Greenberg made a motion to proceed to a final hearing, which was seconded by Commissioner McCormick. The motion failed for lack of sufficient votes (3-3-1). Voting in favor: Commissioners Greenberg, McCormick, and Stanton. Voting against: Chair Soberon and Commissioners Kahle, and Lari. Commissioner Danburg abstained. Commissioner Ohueri recused, and Secretary Lerner and Commissioners Lovins and Teneyuca were absent.**

**The Chair announced that because the Commission did not determine that there were reasonable grounds to move to a final hearing, the complaint is dismissed pursuant to City Code Section 2-7-44(D).**

**Commissioner Soberon left the meeting at the conclusion of item no. 2(b).**

**The Commission took a short recess at approximately 9:19 p.m. and the meeting reconvened at 9:28 p.m.**

**Vice-Chair Ohueri served as the presiding officer for the remainder of the meeting.**

**Item 2(a) was taken up next. Complainant Joseph Cascino appeared; Eric Opiela, attorney for Otto Swingler, and Respondent Otto Swingler appeared.**

**Commissioner Greenberg made a motion to extend the meeting past 10:00 p.m. for the purpose of considering item 2(a), which was seconded by the raised hands of both Commissioner Danburg and McCormick. The vote failed on a vote of 4-2-1. Voting in favor: Vice-Chair Ohueri and Commissioners Greenberg, Kahle, and McCormick. Voting against: Commissioners Danburg and Stanton. Commissioner Lari Abstained. Chair Soberon, Secretary Lerner, and Commissioners Lovins and Teneyuca were absent.**

**At approximately 9:51 p.m., Commissioner Greenberg made a motion to postpone item 2(a) and item 3 until the next meeting of the Commission. Commissioner Danburg seconded the motion. At approximately 9:56 p.m., due to the 10:00 p.m. rule, the motion to postpone was tabled by Vice-Chair Ohueri.**

**Commissioner Greenberg then made a motion to extend the meeting past 10:00 p.m, and Commissioner Kahle seconded the motion. The motion passed on the affirmative vote of at least six members of the Commission. Vice-Chair Ohueri and Commissioners Danburg, Greenberg, Lari, McCormick, and Stanton voted in favor. Commissioner Kahle's vote was not recorded. The following commissioners were absent: Chair Soberon, Secretary Lerner, and Commissioners Lovins and Teneyuca.**

**Commissioner Greenberg then restated her motion to postpone item 2(a) and item 3 to the next meeting, which was seconded by Commissioner McCormick. The motion passed unanimously by the members present (7-0). Voting in favor: Vice-Chair Ohueri and Commissioners Danburg, Greenberg, Kahle, Lari, McCormick, and Stanton. Chair Soberon, Secretary Lerner, and Commissioners Lovins and Teneyuca were absent.**

### **3. FINAL HEARING**

Discussion and possible action regarding the following:

The complaint(s) filed on October 13, 2020 by Mark Littlefield against Save Austin Now, which allege violations of City Code Chapter 2-2 (Campaign Finance) Sections 2-2-23 (Political Committees) and 2-2-26 (Filing Campaign Finance Report Data) of Chapter 2-2 (Campaign Finance).

**At approximately 9:34 p.m., the parties were asked to appear and state their position on whether they desired to proceed past 10:00 p.m. Outside counsel, Steve Sheets,**

appeared for the Commission in regard to this complaint; Executive Liaison and Assistant City Attorney, Lynn Carter assisted with procedural questions.

Complainant Mark Littlefield appeared; Donna Garcia Davidson and Chris Gober appeared as counsel for Respondent Save Austin Now. The parties stated their positions in regard to whether to postpone the final hearing.

At approximately 9:45 p.m., Commissioner Greenberg made a motion to request that Respondent Save Austin Now provide a list of its expenditures for the time period in question. The motion was restated at approximately 9:48 p.m. Commissioner Kahle seconded the motion. The motion passed on a vote of 6-0-1 of the members present. Voting in favor: Commissioners Danburg, Greenberg, Kahle, Lari, McCormick, and Stanton. Vice-Chair Ohueri abstained. Chair Soberon, Secretary Lerner, and Commissioners Lovins and Teneyuca were absent.

At approximately 9:51 p.m., Commissioner Greenberg made a motion to postpone item 2(a) and item 3 until the next meeting of the Commission. Commissioner Danburg seconded the motion. At approximately 9:56 p.m., due to the 10:00 p.m. rule, the motion to postpone was tabled by Vice-Chair Ohueri, and the motion to extend the meeting past 10:00 p.m. was voted on.

The motion to extend the meeting past 10:00 p.m was seconded by Commissioner Kahle and passed on the affirmative vote of at least six members of the Commission. Vice-Chair Ohueri and Commissioners Danburg, Greenberg, Lari, McCormick, and Stanton voted in favor. Commissioner Kahle's vote was not recorded. The following commissioners were absent: Chair Soberon, Secretary Lerner, and Commissioners Lovins and Teneyuca.

Commissioner Greenberg then restated her motion to postpone item 2(a) and item 3 to the next meeting, which was seconded by Commissioner McCormick. The motion passed unanimously by the members present (7-0). Voting in favor: Vice-Chair Ohueri and Commissioners Danburg, Greenberg, Kahle, Lari, McCormick, and Stanton. Chair Soberon, Secretary Lerner, and Commissioners Lovins and Teneyuca were absent.

#### **4. NEW BUSINESS**

Discussion and possible action regarding the following:

- (a) Draft Op-Ed by the Working Group on Race, Identity, and Equity

**No action was taken.**

#### **5. OLD BUSINESS**

Discussion and possible action regarding the following:

- a. Working group status reports and/or recommendations on the following.

- i. Working Group on Sanctions, Procedures, and other Issues (Chair Soberon, Vice-Chair Ohueri, and Commissioners Greenberg and Lerner) on the following subjects:
  - Commission sanctions including effectiveness, past cases, and recommendations.
  - Potential amendments to City Code, Chapter 2-7 (Ethics and Financial Disclosure).
  - Commission procedures including effectiveness, past cases, and recommendations.
  - Scope of work of the Commission (powers, duties, and obligations), including effectiveness, past cases, and recommendations.
  - Potential amendments to the Rules of the Ethics Review Commission.
  - Best practices for city attorney opinions including effectiveness, past cases, and recommendations.
- iii. Working Group on Race, Identity, and Equity (Commissioners Kahle, Lari, and Soberon) status report and/or recommendations on: addressing issues of race, identity, and equity including: (i) planning for presentations or trainings by the Equity Office; (ii) helping focus the Commission's evaluation of racial injustice and how the Commission can operate more fairly and effectively in light of racial injustice.

**The Commission discussed working group updates. No action was taken before proceeding to items 6 and 7 on the agenda. The Commission then returned to discussion of Agenda Item 5(a) before adjournment at which point, the Commission discussed adding to item (a)(i): procedures or Code amendments for assisting complainants / citizens with complaints, including assisting with understanding the City Code. Vice-Chair Ohueri also added Commissioner Stanton as a fifth member of working group (a)(i).**

#### **6. APPROVAL OF MINUTES: APRIL 14, 2020 REGULAR COMMISSION MEETING.**

Discussion and possible action regarding the minutes for the April 14, 2021 regular commission meeting.

**The minutes were not ready, so no action was taken.**

#### **7. FUTURE AGENDA ITEMS AND ANNOUNCEMENTS**

**Announcement of new commissioners: Michael Lovins, Nguyen Stanton, and Mikki Teneyuca. Commissioners Lovins and Teneyuca were unable to participate due to the need to complete required training prior to participation.**

**Future agenda items were discussed. The Commission returned to discussion of Agenda Item 5 before adjournment.**

#### **ADJOURNMENT**

**The meeting adjourned at 10:23 p.m.**