

MINUTES

ETHICS REVIEW COMMISSION MEETING

February 10, 2016

MAIN CONFERENCE ROOM

2nd FLOOR

300 N. CAMPBELL STREET

MEMBERS PRESENT

Stuart Schwartz, Mayor – Presiding Officer
Mark-Thomas Bray, District #4
Adolpho Telles, District #5
Jed Untereker, District #6
Emmanuel Echeverria, District #7
Rafael Adame, District #8

MEMBERS ABSENT

Theresa Ware-Asbury, District #1
Audrey A. Marrufo, District #2
Eduardo Miranda, District #3 – Vice Chair

OTHERS PRESENT

Sylvia Borunda Firth, City Attorney
Amanda Martinez, Recording Secretary
Ross Fischer, Attorney
Edmundo Calderon
Roque Agnon – District #1 Staff
Camilo Jiminez – District #5 Staff
Media

I. CALL TO ORDER

Seeing a quorum, Presiding Officer Stuart Schwartz called the meeting to order at 6:02 p.m.

II. APPROVAL OF MINUTES FROM JANUARY 13, 2016.

Motion made by Mr. Adame to approve the minutes of January 13, 2016. Mr. Telles seconded the motion, with the commission voting unanimously to approve.

Presiding Officer Schwartz started the meeting off with the attached statement regarding the progress on the ethics complaint filed by Jim Tolbert against City Rep. Larry Romero and City Manager Tommy Gonzalez.

III. DISCUSSION AND ACTION REGARDING WORK ASSIGNED TO THE ETHICS REVIEW COMMISSION BY THE MAYOR AND COUNCIL IN NOVEMBER 2013; STATUS REPORT REGARDING SAME AND PROCEDURE FOR COMPLETING ASSIGNMENTS.

Motion made by Presiding Officer Schwartz to go into Executive Session pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Chapter 551, Subchapter D, to discuss any of the following: Section 551.071 Consultation with Attorney. Mr. Bray seconded the motion, with the commission voting unanimously to retire into executive session. Ethics Review Commission retired into executive session at 6:04 pm.

At 8:13 PM, the Ethics Review Commission came out of Executive Session with no action being taken on this subject matter.

Motion made by Mr. Adame directing counsel to prepare a list of witnesses to be called to provide evidence at the hearing on the sworn Complaint and that the witness list be provided to each respondent. Mr. Telles seconded the motion. No discussion and the motion passed unanimously.

Motion made by Mr. Bray directing counsel to conduct an interview with Noe Hinojosa. Mr. Adame seconded the motion. No discussion and the motion passed unanimously.

Motion made by Mr. Echeverria directing counsel to conduct an interview with Mr. Romero, in the event that Larry Romero's official resignation is received. Mr. Bray seconded the motion. No discussion and the motion passed unanimously.

Motion made by Mr. Untereker directing counsel to prepare a letter to each respondent summarizing the evidence already gathered and any additional evidence obtained subsequent to today's meeting including facts favorable and unfavorable to the Respondents. Mr. Adame seconded the motion. No discussion and the motion passed unanimously.

IV. DISCUSSION AND ACTION REGARDING DATES FOR FUTURE MEETINGS.

Presiding Officer Schwartz stated that at this time it was too early to schedule the next meeting but that he would communicate with the commission members before scheduling. The commission members agreed to wait to hear from Presiding Officer Schwartz on when the next meeting would need to commence.

V. ADJOURNMENT.

Motion made by Presiding Officer Schwartz, seconded by Mr. Telles to adjourn the meeting. Motion approved unanimously to adjourn the meeting at 8:16 PM.

APPROVED:

Date

CERTIFIED AGENDA OF THE EXECUTIVE SESSION OF THE EL PASO ETHICS REVIEW COMMISSION

On February 10, 2016, the Ethics Review Commission adjourned into Executive Session at 6:04 PM, in accordance with Texas Government Code §551.071, to discuss the following agenda item:

5. Discussion and action regarding Ethics Complaint dated December 3, 2015, filed by Jim Tolbert regarding Tommy González, City Manager and Larry Romero, City Representative for District 2.

The Ethics Review Commission reconvened Open Session at 8:13 PM, having taken no action on this subject matter in Executive Session.

I hereby certify that this document is a true and correct record of the proceedings described above.

PRESIDING OFFICER:



Stuart Schwartz

CONFIDENTIAL: This document shall not be made available for public inspection or copying absent a court order as required by Texas Government Code §551.104.

Remarks by Stuart Schwartz, Presiding Officer
of the City of El Paso Ethics Commission
February 10, 2016

Commissioners, Ladies & Gentlemen:

Much has been accomplished in the month since the Ethics Commission's first meeting to consider the sworn Complaint filed by Jim Tolbert against City Representative, Dist. 2, Larry Romero and City Manager Tommy Gonzalez.

Following the Commission's last meeting, our attorney, Ross Fischer, delivered copies of the Complaint submitted by Mr. Tolbert to both Mr. Gonzalez and Rep. Romero as required by City Code.

It has been extensively reported in the media that Rep. Romero intends to resign from serving on City Council. As of this evening, however, no formal, signed letter of resignation has been tendered to the City. For a resignation to be effective, it must be in writing and signed by the officer seeking to resign. A resignation becomes effective either the 8th day after a signed resignation is submitted, or when it is accepted by Council, whichever is earlier. If Mr. Romero formally resigns and relinquishes his office, his conduct as described in the Tolbert Complaint will no longer be subject to the Commission's review. Until that time, however, the Commission must proceed with its investigation and hearing of the Complaint filed against him. In the event of his resignation, Mr. Romero's knowledge of the events pertinent to the remainder of the Complaint against City Manager Tommy Gonzalez remains of keen interest to the Commission and we hope and trust that he will fully cooperate with us in this investigation, health permitting.

Mr. Fischer has worked diligently to advance this investigation. First and foremost, he prepared an assessment of the claims contained in the Complaint filed by Jim Tolbert. This was no easy task, as it required a thorough analysis of the Complaint along with its attachments, a review of numerous City policies and practices directly related to the issues raised in the Complaint, a review of the report requested by Mayor Leeser from Mr. Gonzalez (provided through the Internal Auditor), as well as conducting interviews with several present and former City representatives and employees.

On Feb. 1st, Mr. Fischer mailed a set of questions to Mr. Romero and the City Manager. Upon receiving the list, Mr. Gonzalez's attorney requested an extension of time to respond to the questions, which Mr. Fischer granted. Those responses

are now due to be received by February 16. As a courtesy, Mr. Fischer offered the same extension of time to Representative Romero.

Yesterday, the Commission learned that Mr. Noe Hinojosa of the Estrada Hinojosa financial firm has agreed to be interviewed with respect to his role, if any, in the decision to issue a Request for Qualifications for a financial adviser to the City. The details of this information gathering process is being worked out.

Next, let me try to describe the process envisioned by the Commission to complete its mandated responsibilities from this point forward:

First and foremost, the City Code sets out the manner and method by which we are to conduct these proceedings and the due process that must be accorded the respondents. We intend to afford all parties every reasonable opportunity to participate in this process.

Tonight we expect to hear from our attorney. He will review with us the issues raised in the Tolbert Complaint and receive direction from the Commissioners regarding any further investigation that may be required to advance this process. This will take place in Executive Session in accordance with the Open Meetings Act.

Once all available information is gathered, the City Code sets out a process to conduct the actual hearing. The Commission can establish time limits and other rules relating to the participation of any person in the hearing so that an orderly and fair hearing process will be conducted for all participants.

As respondents, both Mr. Romero and Mr. Gonzalez have the right to attend the evidentiary hearing, to make a statement, to present witnesses, and to be accompanied by his legal counsel or other advisor.

Mr. Tolbert also has the same rights with the exception that the City Code does not permit him to personally question or cross-examine witnesses, except with the permission of the Commission.

The Commission also has the authority to request witness testimony and the production of documents. This includes the subpoenaing of witnesses which would be issued by the City Council.

In fairness to both Mr. Romero and Mr. Gonzalez, the City Code requires that Mr. Fischer disclose to the Commission as well as to subjects of the Tolbert Complaint any evidence which tends to negate guilt or mitigate the seriousness of any allegation asserted against them.

The City Code establishes the standard by which the respondents' conduct is to be judged. Any finding that a violation occurred must be supported by "clear and convincing evidence." That standard is defined in the City Code to mean "that measure or degree of proof that produces in a person's mind a firm belief or conviction as to the truth of the allegations sought to be established."

At the conclusion of the hearing, the Commission can vote to dismiss the Complaint in whole or in part or determine that a violation has occurred, resulting in sanctions permitted by the City Code.

At this point, it is too early to set a date or dates for the final hearing. What we can say is that we will continue to investigate the issues raised in the Complaint as quickly and thoroughly as practicable.

This process is not a sprint. It is a marathon. We need to get this right. We will be deliberative and considerate of the process and the persons directly affected by our actions and recommendations.