

CITY CLERK DEPT.  
2016 MAY 18 PM 12:35

Barbara Carrasco  
981 Vereda del Valle  
El Paso, Tx 79932  
May 18, 2016

Ms. Sylvia Borunda Firth  
City Attorney  
P.O. Box 1890  
El Paso, Tx 79950

**HAND DELIVERED 05-18-2016**

Re: Ethics Complaint Filed January 26, 2016 – Claudia Ordaz  
Appeal dated April 7, 2016; Hand delivered April 11, 2016

Dear Ms. Firth:

I am in receipt of your letter dated May 16, 2016 in which you state you are “unable to treat your (my) April letter as new ethics complaint because it does not meet the requirements of the Ethics Ordinance.”

Per your suggestion attached is my updated, revised complaint that meets all of the requirements for consideration by the ethics panel. You will find there are no deficiencies in this complaint.

I would request that my Complaint be forwarded to the Ethics Committee for their consideration pursuant to their specific request on April 13<sup>th</sup> that they be provided copies of complaints before you present your decision regarding ethics complaints.

I am hopeful that you or someone in your office can explain the timeline for not accepting my letter (appeal) as a complaint. On April 13<sup>th</sup> you stated the City did not have a process to accept appeals and that such a process should be put place and your office would commence work on one. Then you stated you had 20 days to respond to my letter (appeal).

I am assuming, based on your comments, you were aware on April 13<sup>th</sup> that you were not going to accept my letter as a complaint and could not accept it as an appeal. I am further assuming that this was conveyed to Ordaz sometime after the 13<sup>th</sup> but prior to May 16<sup>th</sup> otherwise she would not have told the El Paso Times on May 11<sup>th</sup> that the appeal had been dismissed yet your letter dated May 16<sup>th</sup> stated you had dismissed it that day, the 16<sup>th</sup>.

*R* 16-1020-1082  
SEARCHED



You can understand the frustration one feels when comments do not fit a specific timeline. It would have been prudent, responsible and professional to let me know in a timely fashion that my letter was not being accepted either as an appeal or as a complaint.

I would recommend that changes be made to the Ethics Code which would allow a citizen's complaint to first be reviewed by the Ethics Committee, if they believe there are actionable allegations that need to be addressed then they consult the city attorney for legal advice.

As the code is written today, the city attorney is the filter, jury and judge which in my view, denies a citizen an opportunity to present their case before the Ethics Committee and submit evidence or elaborate on evidence which pertains to their complaint.

Sincerely,

  
Barbara Carrasco

Cc: mayor@elpasotexas.gov  
Stuartelpethics@gmail.com  
lawoffice@rwarach.com  
daniel@anchondolaw.com  
Mark.thomas.bray@gmail.com  
Artelles1@yahoo.com  
Jed.untreker@gmail.com  
Emmanuel0010@hotmail.com  
radame@mexus.us

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**CITY OF EL PASO ETHICS REVIEW COMMISSION  
COMPLAINT FORM**

Please refer to the instructions accompanying this form for assistance in filling out this form and filing it with the City Clerk's Office. A complaint may be filed against a City officer for the officer's acts or omissions, as regulated in Section 2.92.050 of the Ethics Ordinance. A "City officer" is a member of the City Council and the members of most of the boards and commissions of the City. This form cannot be used to file a complaint about a City employee—please refer to the instructions.

1. Name: Barbara Carrasco

2. Address: 981 Vereda del Valle, El Paso, Tx 79932

3. Telephone number: Day: 915-329-3415 Evening: 915-329-3415

4. Name and title of each City officer being complained about:

Councilwoman Claudia Ordaz

5. General statement of the nature of the complaint and alleged violation of the ethics ordinance, to include whenever possible, the specific section of the Ethics Ordinance allegedly violated.  
Ms. Ordaz violated specific provisions of Sec. 2.92.050, Exhibit "A".

6. A statement of the facts that constitute the alleged violation and the dates on which or period of time in which the alleged violation occurred (attach additional pages, if necessary).

2.92.050.B--Ms. Ordaz used her position improperly to secure an unwarranted privilege for an individual not available to the general public; 2.92.050.D- by her actions, she gave reasonable basis that she can be improperly influenced to obtain information for others; 2.92.050.E-she used her position to obtain information regarding a particular entity which is not available to the general public and shared that information via text; 2.92.050.F- she used and disclosed confidential information gained in the course of her position which is not available to the general public and shared that info via text

7. Provide relevant documentation or a list of all documents and other material relevant to the allegation, including the location of any such documents, if known.

Exhibit "A" ... copy of specific sections of 2.92.050 which were violated

Exhibit "B" 1 and 2 Text messages between Ordaz and Escobar

Video of June 1st regarding executive closed-door deliberation meeting, recommended by Sylvia Firth, may be verified on City website

Please continue with page 2 and complete the required affidavit. You may appear in person and request the City Clerk's Office to notarize the complaint at the time that you sign and file it.

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STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

BEFORE ME, the undersigned authority, personally appeared the person whose name is written above on line 1 of this form, being by me duly sworn, deposed as follows:

"I hereby swear or affirm that the information contained in this complaint is either true and correct or I have good reason to believe and do believe that the facts alleged therein constitute a violation of Chapter 2.92 of the El Paso City Code."

B Carrasco  
(SIGNATURE)

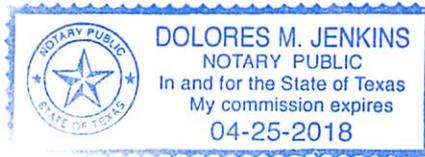
SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, by

Barbara Carrasco, on this the 18th day of May, 2016.

Dolores M. Jenkins  
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

MY COMMISSION EXPIRES:

04/25/2018



\_\_\_\_\_  
For City use only: Received on \_\_\_\_\_ by \_\_\_\_\_  
Forwarded to the City Attorney's Office on \_\_\_\_\_  
Disposition: \_\_\_\_\_  
\_\_\_\_\_

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**2.92.050 Standards of conduct.**

**Officers or employees:**

**B. Shall not use their official positions improperly to secure unwarranted privileges or exemptions for themselves, relatives, or others. This provision does not preclude officers or employees from acting in any manner consistent with their official duties or from zealously providing public services to anyone who is entitled to them;**

**D. Shall not give reasonable basis by their conduct for the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties, or that they are unduly affected by the kinship, rank, position or influence of any person;**

**E. Shall not use his or her position to secure official information about any person or entity for any purpose other than the performance of official responsibilities;**

**F. Shall not use or disclose, other than in the performance of their official duties or as may be required by law, confidential information gained in the course of or by reason of their positions. This provision applies to former officers and employees as well as to current ones;**

**EXHIBIT "A"**

CITY CLERK DEPT.  
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[6/1/15 10:42 AM] iPhone (3): We spoke about the exec items in agenda review today

[6/1/15 10:40 AM] iPhone (3): Hospital item dead :) sold the idea about not offering charity/unfunded care and council agreed. Also Noe compared these like casinos.

[5/30/15 7:09 AM] iPhone (3): Ok. The more info the better so I appreciate it very much. I'll call you monday

[5/30/15 7:09 AM] Veronica Escobar (9154336041): There are more reasons. Let's talk Monday. Thanks and have a great weekend!

[5/30/15 6:58 AM] iPhone (3): Good to know. Thanks judge. Completely agree and I'll definitely make sure and voice that. I'll let you know how it goes!

[5/30/15 6:54 AM] Veronica Escobar (9154336041): The name of the company is Sun City. No private health care company in EP should ever get tax breaks. I bet they would do zero charity/unfunded care. At least Tenet and HCA take care of unfunded patients. I bet these stand alone shops don't.

[5/28/15 7:25 PM] iPhone (3): Ok. Sounds good. I'll call you in tomorrow

[5/28/15 6:59 PM] Veronica Escobar (9154336041): Yes. Just wondering about those incentives for medical facilities on the east and west side that are on your agenda

[5/28/15 6:40 PM] iPhone (3): Hi judge. Yes of course. Im in austin right now with Vince's fam but I'll have some alone time tomorrow. Everything ok?

**Conversation between iPhone (3) and Vincent (9153731013)**

[8/5/15 4:10 PM] iPhone (3): I know

[8/5/15 4:09 PM] Vincent (9153731013): Youve gotta learn from it an move on. You have too much work to do to dwell on this and let you bring it down.

[8/5/15 4:09 PM] iPhone (3): I'm not behind my decision

[8/5/15 4:09 PM] iPhone (3): Even if he's not

[8/5/15 4:09 PM] Vincent (9153731013): Jorge is on your side

[8/5/15 4:08 PM] iPhone (3): Can't shake this feeling off

[8/5/15 1:16 PM] iPhone (3): Just shows how different we are

[8/5/15 1:16 PM] Vincent (9153731013): So u couldnt have been able to change the outcome

[8/5/15 1:16 PM] Vincent (9153731013): Well there u go

[8/5/15 1:15 PM] iPhone (3): Spoke with peter. He doesn't feel the least bit bad. He said he feels more comfortable with this vote than any other he's taken.

[7/20/15 10:41 AM] Vincent (9153731013): Hmmm

[7/20/15 10:14 AM] iPhone (3): Actually the major is acting awfully nice. Made it a point to talk to me

[7/20/15 10:14 AM] iPhone (3): It's great!

[7/20/15 10:14 AM] iPhone (3): Lol no one is talking to me!

[7/20/15 10:13 AM] Vincent (9153731013): How is it with your colleagues?

[3/25/15 1:30 PM] iPhone (3): Hey Tommy! Favor to ask of you. As you know It's campaign season and a lot of my signs are being taken down. I'm thinking its code compliance. There is a sign that was taken down on zaragosa and rabe. And now my opponent has a sign up there. Since code compliance took my sign down there, can you have them take down his as well? Equal treatment :)

[3/7/15 11:13 AM] Tommy Gonzalez [Personal] ([REDACTED]) K. Was having issues with text messages

[3/7/15 10:53 AM] iPhone (3): Yes I am. I got test and thank you for the kind words

[3/7/15 10:53 AM] Tommy Gonzalez [Personal] ([REDACTED]) R u getting my text messages? My phone is on the fritz

[3/7/15 9:58 AM] Tommy Gonzalez [Personal] ([REDACTED]) Test

[3/7/15 9:58 AM] Tommy Gonzalez [Personal] ([REDACTED]) Thank you for the kind words.

[3/6/15 7:18 PM] Tommy Gonzalez [Personal] ([REDACTED]) Thank you for the kind words.

[3/6/15 6:15 PM] iPhone (3): Heard you rocked it last night at the Lulac event. Congratulations! Thanks for making a lasting impression on this community

**Conversation between iPhone (3) and Veronica Escobar (9154336041)**

[7/20/15 5:03 PM] iPhone (3): Thanks Judge and yes I'd absolutely love that!

[7/20/15 5:02 PM] Veronica Escobar (9154336041): You're awesome. Keep your chin up!!! The city is damn lucky to have you. Let's get together this week for drinks and laughs to shake off some of the bad vibes from work, if you like. @

[7/20/15 4:58 PM] iPhone (3): Being on this island... all I need is a Mai Tai! 🍹

[7/20/15 4:57 PM] iPhone (3): Hi Judge! Thanks for asking. Things are ok... getting better. No one is talking to me still but I feel in the end, this will only make the city better.

[7/20/15 4:27 PM] Veronica Escobar (9154336041): How was your day? Better, I hope?

[7/19/15 11:54 PM] iPhone (3): Thanks judge. It's awful the city sent him there. I felt so bad.

[7/19/15 11:53 PM] Veronica Escobar (9154336041): You did great! I felt sorry for Matthew and I think the rest of council looks terrible

[7/19/15 11:44 PM] iPhone (3): Hi Judge! Sorry for the delayed response. I was emotionally preparing for today!

[7/19/15 6:14 PM] Veronica Escobar (9154336041): How are you doing?

[7/17/15 3:52 PM] Veronica Escobar (9154336041): The guy Carl appointed to the Charter committee (Thackson), who pushed moving the elections back to May was recommended by the Republican party

[6/1/15 10:42 AM] iPhone (3): Thank you for putting this on my radar!! Team work

[6/1/15 10:42 AM] Veronica Escobar (9154336041): Good for you!!! Thanks for protecting the taxpayer!

TM  
**BOJORQUEZ**  
**LAW FIRM, PC**

12325 Hymeadow Drive  
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Austin, Texas 78750

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[www.TexasMunicipalLawyers.com](http://www.TexasMunicipalLawyers.com)

June 21, 2016

*Certified Mail RRR*

Barbara Carrasco  
981 Vereda de Valle  
El Paso, Texas 79932

**Subject: Ethics Complaint filed May 18, 2016**  
**- regarding El Paso City Representative Claudia Ordaz**

Ms. Carrasco:

My law firm has been engaged by the City of El Paso to assess the complaint you submitted and provide a response. I have been designated by the City Attorney to act on behalf of the City Attorney's Office under El Paso City Code, § 2.92.080 [Complaints-Filing-Review].

Your complaint involves an exchange of text messages between City Representative Claudia Ordaz and County Judge Veronica Escobar. You have alleged that these text messages constitute violations of certain provisions of § 2.92.050 [Standards of Conduct], specifically asserting that Ordaz:

- (1) "used her position improperly to secure an unwarranted privilege for an individual not available to the general public" § 2.92.050.B.
- (2) "by her actions gave reasonable basis that she can be improperly influenced to obtain information for others." § 2.92.050.D.
- (3) "used per position to obtain information regarding a particular entity which is not available to the general public and shared that information via text." § 2.92.050.E.
- (4) "used and disclosed confidential information gained in the course of her position which is not available to the general public shared that info via text". § 2.92.050.F.

Your allegations were conclusory statements comprised of mere recitations of the City Code. The complaint you submitted did not on its face state an allegation that constituted a violation of the City Code that is administered and enforced by the Ethics Review Commission. Thus, it is my determination that the City Attorney's Office shall dismiss the complaint on the grounds that, if true as alleged, the conduct would not as a matter of law constitute a violation of Chapter 2.92 of the City Code.



**SCANNED**



**Independent Outside Attorney.** The City Attorney has the discretion to retain an independent outside attorney in order to carry out the responsibilities of the City Attorney's Office under the Ethics Ordinance. El Paso City Code §2.92.030(D)(3). My firm was retained based on our expertise in municipal ethics regulations and procedures, and our neutrality in this situation.

**Burden of Proof.** As the complainant, you have the burden of proof to show that the submitted complaint is either true and correct, or that you have good reason to believe (and do believe) that the facts alleged constitute a violation to the City Code. The complaint must, on its face, state an allegation that, if true constitutes a violation of the City Code. The face of the instrument means that which is shown by the language employed, without any explanation, modification, or addition from extrinsic facts or evidence.<sup>1</sup> In considering whether or not the complaint alleges any violation of the Code, my review was limited to the four corners of the complaint – nothing more. This assessment included the exhibits that were included with the complaint. Facts outside of the complaint, even those easily ascertained, were not eligible for consideration.

**Alleged Violation 1: § 2.92.050(B): Officers or employees:**

“Shall not use their official positions improperly to secure unwarranted privileges or exemptions for themselves, relatives, or others. This provision does not preclude officers or employees from acting in any manner consistent with their official duties or from zealously providing public services to anyone who is entitled to them.”

A “privilege” is “a particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens.”<sup>2</sup> The plain meaning of “unwarranted” is not justified or authorized.<sup>3</sup> Whereas “exemption” carries the meaning “freedom from a general duty or service; immunity from a general burden, tax, or charge.”<sup>4</sup> In this instance, the complaint did not specify what privilege or exemption is at issue. The limited evidence provided in the complaint failed to demonstrate that Ordaz violated this provision. There was no indication how Ordaz allegedly used her position as a city representative to elicit unauthorized benefits or advantages for herself or others beyond information available to citizens. An exchange of opinions (by text or other means) did not constitute a privilege, or exemption.<sup>5</sup>

**Alleged Violation 2: § 2.92.050(D): Officers or employees:**

“Shall not give reasonably basis by their conduct for the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties, or that they are unduly affected by the kinship, rank, position, or influence of any person.”

<sup>1</sup> BLACK'S LAW DICTIONARY (9<sup>th</sup> ed. 2009). El Paso Code § 2.92.020 states that if terms are not defined, utilize definitions provided in the Texas Election Code. Furthermore, the Texas Election Code applies the Code Construction Act (Texas Government Code §311.011), which states that “words and phrases shall be read in context and construed according to the rules of grammar and common usage.” In determining the common usage and plain meaning, we use dictionary definitions and consider words in context. *Ex Parte Perry*, 483 S.W.3d 884, 902 (2016).

<sup>2</sup> BLACK'S LAW DICTIONARY.

<sup>3</sup> “Unwarranted.” *Merriam-Webster.com*. 2011. <http://www.merriam-webster.com>.

<sup>4</sup> *Id.*

<sup>5</sup> Even if one were to assume that the “privilege” contemplated in the complaint is the receipt of information by one citizen from a city representative while that representative is in executive session (i.e., a closed meeting), the complaint fails to provide evidence that such a courtesy is unavailable to other citizens.

The meaning of “reasonably basis” is a fair and sensible fixed pattern or something from which another thing develops or can develop.<sup>6</sup> Improper influence means to bring undue pressure upon a person to try to get them to do something they normally would not do.<sup>7</sup>

In this situation, there was no indication in the complaint that Ordaz’ alleged statements to the city council about unfunded care were outside the norm. If it revealed anything, the evidence presented showed that Ordaz and Escobar were of similar minds on the subject. The evidence does not support a conclusion that Ordaz conducted herself in a manner that would convey she was receptive to unusual pressure or influence. The evidence also failed to show that Ordaz indicated Escobar could expect any extraordinary benefits stemming from their special relationship. There was no indication that Ordaz subjected herself to any more influence than any private citizen could exert upon her in the normal course of conducting city business.<sup>8</sup>

**Alleged Violation 3: § 2.92.050(E): Officers or employees:**

“Shall not use his or her position to secure official information about any person or entity for any purpose other than the performance of official responsibilities.”

“Official” is used as an adjective to describe something pertaining to an office; invested with the character of an officer; proceeding from, sanctioned by, or done by, an officer.<sup>9</sup> The plain meaning of “information” is knowledge that you get about something or someone; facts or details about a subject. There was no evidence that Ordaz obtained official information for any reason outside the scope of city representative. The complaint was devoid of information that might establish Ordaz’ motivation or purpose for using the information beyond conducting official municipal business, and no such extracurricular motivation or purpose can be inferred.

**Alleged Violation 4: § 2.92.050(F): Officers or employees:**

“Shall not use or disclose, other than in the performance of their official duties or as may be required by law, confidential information gained in the course of or by reason of their positions. This provision applies to former officers and employees as well as to current ones.”

The complaint alleged that Ordaz violated this subsection because she used and disclosed confidential information that she obtained as a city representative, and that information was not available to the general public, then shared that information via text. The City Code defines “confidential information” as any non-written information which, if it were written, could be excepted from disclosure under the Texas Public Information Act, unless disclosure has been

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<sup>6</sup> “Reasonable” and “Basis.” *Merriam-Webster.com*. 2011. <http://www.merriam-webster.com>.

<sup>7</sup> “Improper influence.” *BLACK’S LAW DICTIONARY*. Refers to undue influence defined as “persuasion, pressure, or influence short of actual force, but stronger than mere advice, that so overpowers the dominated party’s free will or judgment that he or she cannot act intelligently and voluntarily, but acts instead, subject to the will or purposes of the dominating party.”

<sup>8</sup> *Isassi v. State* (App. 13 Dist. 2009) 2009 WL 2263654, petition for discretionary review granted, reversed 330 S.W.3d 633, on remand 2011 WL 578751, rehearing overruled. (Evidence was legally insufficient to support defendant’s conviction for improper influence.).

<sup>9</sup> *BLACK’S LAW DICTIONARY*.

authorized. § 2.92.020. The Texas Public Information Act exempts confidential information from mandatory public release if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>10</sup>

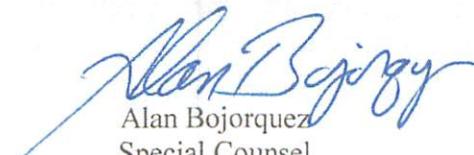
Under Texas Government Code § 551.146, the certified agenda (i.e., minutes) or recording of a meeting that was lawfully closed to the public is confidential, and any individual who discloses this information to a member of the public commits an offense. However, that statutory prohibition does not expressly apply to text messages (or other communications). In addition, the Texas Attorney General has determined the mere fact that a document was discussed in an executive session does not make it *confidential* under the Public Information Act.<sup>11</sup> Pursuant to Attorney General Opinion JM-1071, persons present at executive sessions are not generally prohibited by the Public Information Act from discussing the topics afterward.<sup>12</sup>

In this case, the evidence transmitted with the complaint did not show that Ordaz disclosed the certified agenda or recording of the closed meeting. Having failed to establish that the information transmitted was confidential, the complaint also failed to show that confidential information was used or disclosed by Ordaz outside the performance of her official duties (or as may be required by law).

**Determination.** Based on the analysis and conclusions set out above, this complaint is hereby dismissed on the basis that, even if true as alleged, the conduct described does not as a matter of law constitute a violation of the Code, as provided by § 2.92.080(G)(3). The other options set forth in that section are not available for the following reasons:

1. This matter was not referred to the Ethics Review Commission because the complaint did not identify conduct within the commission’s purview.
2. As the complainant, you were not notified of any deficiencies because the complaint was deemed inadequate, not deficient. Although the complaint failed to establish a violation under the City Code, it contained the required elements necessary to be complete.
4. The complaint was not assigned to a panel of the Ethics Review Commission because it was not technically deficient, it identified the alleged violations, and it was not obviously frivolous. You presented your allegations, they were evaluated, but deemed insufficient.

Respectfully,

  
Alan Bojorquez  
Special Counsel  
to the City of El Paso

cc: Sylvia Borunda Firth, City Attorney

<sup>10</sup> Tex. Gov’t Code § 552.101 (2011).

<sup>11</sup> Op. Tex. Att’y Gen. No. JM-1071 (1989).

<sup>12</sup> There may be prohibitions in the law for the unauthorized disclosure of attorney-client privileged material or attorney work product, but those exclusions are not implicated in this complaint, and thus not addressed herein.