

MINUTES

ETHICS REVIEW COMMISSION MEETING FEBRUARY 19, 2014 2ND FLOOR AMERICAS CONFERENCE ROOM

MEMBERS PRESENT

Audrey Marrufo, District #2
Eduardo Miranda, District #3-Vice Chair
Kimberly Cook McDaniel, District #5
Anthony Giuliani, District #7
William H. Rivera, District #8

MEMBERS ABSENT

Maxey Scherr, Mayor
Francisco Ortega, District #1
Julian Gonzalez-Herrell, District #4-Chair

OTHERS PRESENT

Sylvia Borunda Firth, City Attorney
Kathryn Murphy, Recording Secretary

1. CALL TO ORDER.

Seeing a quorum, Vice Chair Miranda called the meeting to order at 6:02 p.m.

2. APPROVAL OF MINUTES FOR JANUARY 22, 2014.

Motion made by Mr. Giuliani to approve the minutes of January 22, 2014. Ms. Cook-McDaniel seconded the motion, all in favor and the motion passed unanimously.

3. DISCUSSION AND ACTION REGARDING RECOMMENDATIONS FOR MODIFICATION OF THE EL PASO ETHICS ORDINANCE TO ADDRESS:

- a. 2 yr. prohibition after leaving office/employment**
- b. Monetary Sanctions for violations of Ethics Ordinance**

Ms. Firth referred the Commissioners to the summary of the above items that was provided prior to the meeting.

a. 2 yr. prohibition after leaving office/employment

Ms. First gave the summary for the 2-year prohibition after leaving office/employment. She went on to state this item was referred to the Commission because this issued was raised by former Mayor Cook when he appeared before the Council and felt the 2 year prohibition was too long. The question to the Commission is whether you feel it should be adjusted or left as is.

Vice Chair Miranda asked if there was any discussion.

Mr. Rivera made a motion to retain the 2 year prohibition that is now in place. Ms. Marrufo seconded the motion.

Mr. Giuliani stated he felt the separation in the Austin ordinance of 2 years for former Mayor or Council Member and 12 months for a city employee was more equitable. He stated the city employee is taking a job for his livelihood and shouldn't be penalized the same as a Mayor or City Council member.

Ms. Cook-McDaniel agreed with Mr. Giuliani and stated she felt the 2 years was too long and asked Ms. Firth why that number was chosen. Ms. Firth responded that when the issue was researched the 2 year period was the most common. Ms. Firth went on to say that there have been comments that 2 years is a long period for someone who is leaving and trying to make a living using their expertise and trying to become a consultant.

Mr. Giuliani made an additional comment regarding non-compete clauses in contracts and stated that some contracts are for 3 years but are not held to that and the prohibition for employees should be the same.

Ms. Marrufo stated the difference between the non-compete clause and this is that these are public officials who work for the City and provide for the City and they have to wipe their slates clean and this 2 year period is an adequate amount of time.

Vice Chair Miranda stated he liked the distinction made by Mr. Giuliani regarding the type of employee we are imposing this prohibition against and that further clarification is needed regarding an attorney for example who may have been a former City employee and whether or not that applies across the board to that attorney in every way or does that need more clarification. He felt the 2 year prohibition was a bit onerous especially for someone who practices representing people before boards and especially the courts. He stated he did like the distinction in the Austin ordinance.

There being no further discussion at this time, Vice Chair Miranda stated there was a motion and a second before the Commission to retain the 2 year prohibition across the board. He asked if the Commission was ready to vote or whether there was further discussion.

Mr. Rivera stated people who represent businesses before the Boards, those are the ones we are putting this prohibition on, to prevent them from using their influence before the Boards. He did not feel the numbers would be that great.

Ms. Marrufo asked how many times this has happened in the past; was it frequent that the 2 years was mandated. Ms. Firth responded that it has happened recently with the former Mayor and the former City Attorney, and also a former member of City Council. There is some value for someone who has specialized knowledge in the workings of City Government and we're trying to avoid someone using extra ordinary pressure or influence.

Vice Chair Miranda stated that looking at the summary prepared, it appears that San Antonio is the only other city that has a 2 year across the board prohibition; and the current department heads are the subject of the 2 year prohibition in dealing with former employees for the County. He asked the Commission if we should follow San Antonio's 2 year prohibition or should we tweak it a little to follow Austin, Dallas and Houston.

Mr. Rivera stated the onus should be placed on the City employee to know what is right or wrong.

Vice Chair Miranda pointed out that under the County's ethics rules, if you were a County department head the ethics rule would apply to you and not to me; whereas under the City's ethics ordinance, it's the other way around. If we are trying to prohibit conduct by former employees, former officials, then the 2 year is one way or we do it like the County does and that is to prohibit the current department heads and officials from engaging in this type of conduct that is prohibited.

Ms. Marrufo stated with that being said, there is a fine line because there are some assistant department heads that may be just as or more knowledgeable than the department head and she felt it should be a blanket across to be applicable. Vice Chair Miranda stated that is what the City's ordinance reads now. Ms. Marrufo stated that's correct.

Vice Chair Miranda asked if there was any further discussion. There being none, he stated there was a motion and a second to retain the 2 year prohibition motion and called for a vote.

AYES: Mr. Rivera and Ms. Marrufo

NAYS: Mr. Giuliani, Ms. McDaniel-Cook and Mr. Miranda

The Motion **did not pass**. Vice Chair Miranda stated the motion did not pass and asked the Commission and Ms. Firth where they went from there. Ms. Firth stated someone could make a motion to entertain a hybrid and then vote on that.

Motion made by Mr. Giuliani to look at a hybrid to make a distinction between city employees and elected officials. The motion was seconded by Ms. Cook-McDaniel. Vice Chair Miranda called for any discussion.

Mr. Rivera asked for a clarification of the motion. Vice Chair Miranda stated the motion was to create a hybrid with respect to the prohibition if it involves a mayor or city council member then those people will be under a 2 year prohibition; if it involves anyone other than those people, it would be 12 months or 1 year prohibition.

Ms. Cook-McDaniel stated the Austin prohibition describes not just any city employee but one in a position which involves significant decision-making authority or supervisory responsibility and asked whether we wanted to keep it like that.

Mr. Giuliani said the San Antonio ordinance contains plain language, it just says former city employee or official and he thought it would be better to have just a plain rule that says former city official or employee.

Ms. Firth pointed out that the City's current ordinance does say significant reporting, decision-making, advisory, or supervisory responsibility; it doesn't just take in department heads but it does take into account that there are others who give opinions.

Vice Chair Miranda asked whether the position of City Manager would fall into the 2 year prohibition category. Ms. Firth responded that would definitely be a decision-making, advisory position, and decision-making but if not included with the Mayor and city council, it would fall under the 1 year category.

Vice Chair Miranda asked Mr. Giuliani if he would entertain an amendment to his motion to include the City Manager in the 2 year prohibition. Mr. Giuliani stated he agreed with that considering how much influence the City Manager has with this form of government.

Ms. Cook-McDaniel asked if we would keep the 1 year for those involving significant decision-making, advisory, or supervisory responsibility. Vice Chair Miranda stated as Ms. Firth suggested we leave the language that is in the current ordinance but apply a 1 year prohibition to those but with respect to the Mayor, City Council and the City Manager it would be the 2 year prohibition.

Mr. Giuliani made a motion to bring that to a vote. The motion as amended is to create a hybrid with respect to the prohibition if it involves a mayor, city council member or city manager then those people will be under a 2 year prohibition; if it involves anyone other than those people, it would be 12 months or 1 year prohibition.

AYES: Mr. Rivera, Mr. Giuliani, Mr. Miranda, Ms. Cook-McDaniel and Ms. Marrufo

NAYES: None

The motion passed unanimously

Ms. Firth stated we need to decide how to report back to the Council but it will be a recommendation to the Council that the ordinance be amended to provide for the hybrid.

b. Monetary Sanctions for violations of Ethics Ordinance

Ms. Firth advised the Commission that during the recent Charter Election done last May the voters authorized the Council members consider monetary sanctions and if Council is going to consider it, it has to be done by ordinance. She presented the summary to the Commission and pointed out that San Antonio was the only city that does have a penalty and they have given it a \$500 cap. She went on to state that the County is more but reminded the Commission that the County's ethics ordinance was actually done by the State legislature. She stated it was up to the Commission to recommend to City Council whether or not they should entertain the idea of monetary sanctions.

Vice Chair Miranda stated considering our ordinance doesn't have anything now, the \$500 minimum is a good start but he didn't care for the \$4,000 fine that the County can impose but that is because the State authorized it. He went on to say that the \$500 fine could be filed against someone who files a frivolous complaint and we could define the term "frivolous". He felt these areas were where more "teeth" could be put into the ordinance which was one of the complaints the Council raised before. He also stated he was interested in how we would enforce the fine-whether there was a mechanism in place for enforcement. Ms. Firth responded that would be something the Commission would have to come up with and it would be based upon a finding from the Commission after someone makes a complaint of a violation of the ordinance then it would come before you and you would be the ones to assess it. Vice Chair Miranda asked how that fine would be collected if it involves a current official or employee would that be different that a former official or employee. Ms. Firth responded we could give it the weight of a Class "C" misdemeanor and be enforced in Municipal Court as well. Vice Chair Miranda asked if Municipal Court would prosecute as a civil matter to which Ms. Firth responded yes. Ms. Firth stated that is something to consider and that the big question is how would you go about doing it and what is the likelihood that you would actually collect it. She went on to say if you're dealing with a public official, a sanction from a body like this is pretty hefty; no one wants to say they were sanctioned by the Ethics Review Commission and assessed a \$500 fine.

Vice Chairman Miranda asked if there were any more questions or comments. Mr. Giuliani asked at what point these violations become criminal. Ms. Firth responded when we become aware of something that's criminal in nature, we would refer to the District Attorney or the U.S. Attorney for investigation. Vice Chair Miranda stated that based on Ms. Firth's opinion last month, none of these violations are criminal. Ms. Firth responded these are mostly violations of codes of conduct and how they behave as an elected official and would not necessarily rise to the level of criminal conduct.

Vice Chair Miranda asked the Commission if anyone had ideas to assess different fines for different violations. Ms. Marrufo stated she thought there should be a range of what violations are applicable. Ms. Firth stated the Commission could reserve that until the end so that before you turn it over to the Council when you go over the violations you can determine whether you want to attach a dollar amount to them. Ms. Firth stated what the Council wanted the Commission to consider was from time to time they are sensitive about when we go into Executive Session to discuss personnel matters, or negotiating the purchase of property or settling a lawsuit and then every once in a while what is discussed is in the media and they will get very upset. Obviously it's one of them who had shared information that they should not have and it is one area the Council would like to impose some sort of sanction so that maybe the person would think twice about doing something like that.

Vice Chair Miranda stated if the members are thinking of adding different fines for different violations, then we need to talk about what would be the maximum and whether or not we should have a separate fine for a frivolous complaint.

Mr. Giuliani asked whether the Commission was going to set the dollar amount for each violation now. Vice Chair Miranda responded that the Commission would have to go through the entire ordinance and separate the different violations and talk about whether one violation is more egregious than another and then assess a fine; but he felt they didn't have to do that now.

Mr. Rivera brought up the \$4,000 from the County and asked whether this would be workable. Vice Chair Miranda responded that amount was based on legislation the State gave to the County and it was the State that set the fine and that we're limited on what we can do in terms of assessing the fine by what the City code allows. Ms. Firth stated she thought for a single violation the \$500 would be the max that we could enforce; beyond that we would have issues with enforcement but that doesn't mean there couldn't be multiple offenses which could add up. Her recommendation would be that we don't go over the \$500.

Ms. Firth referred the members to the summary that was provided where it lists the sections in the ordinances where the sanctions can be found. Mr. Rivera asked whether they had particular fines for particular offenses. Ms. Firth responded that she thought they just said up to \$500. She went on to say it would be like appearing in court where the judge has the discretion of placing up to a dollar amount as the fine and the Commission could be treated that way where they would have the discretion of charging up to \$500.

Ms. Firth gave the Commission another example of a violation that they may want consider assessing a monetary fine is people are required to register as lobbyists and right now when they don't register we just send them a letter and assessing a fine might insure that they properly register as a lobbyist. She advised the Commission that lobbyist reports can be found on the City Clerk's website.

Vice Chair Miranda clarified with Ms. Firth that there are different levels of penalties and those will continue regardless of whether the Commission agrees to set a maximum fine of \$500 and that not all violations will be punishable by a fine, we could issue a letter of reprimand, a censure letter, etc; but if we wanted to impose a fine we could set a maximum. Ms. Firth responded in the affirmative.

Vice Chair Miranda asked if there was any further discussion or were we ready to entertain a motion. Mr. Giuliani made a motion to set a maximum dollar amount of \$500 and that each violation will be determined on its own by the Commission. He also asked if every single violation would go through the Commission. Vice Chair Miranda stated it was his understanding they would go through the City Attorney's Office. Ms. Firth responded that when somebody makes a complaint, the first come to the City Attorney's Office and lets us know they would like to refer the complaint to the Ethics Commission; we look at it and if it concerns someone who is covered by the Ethics Ordinance and under your jurisdiction we will bring it to you and then you will make the determination. She went on to say if the complaint is not covered under the Ethics Ordinance then my office will send a letter. She advised the Commission that was something she would discuss with the Commission later; there is some criticism that there is no appeal if I determine there is no jurisdiction, then the complaint goes away so we might want to fix that to say that is someone disagrees with me and wants to bring it to the Commission, they should have

the chance to do so. Vice Chair Miranda stated he thought the County has a process of a standing preliminary review committee to act in lieu of our City Attorney. Ms. Firth stated she didn't have a problem with that at all, she would be happy to have someone else look at it as well and we could get into that later as well.

Vice Chair Miranda asked if we had any provision about frivolous complaints and Ms. Firth responded that we don't. Vice Chair Miranda asked Mr. Giuliani if he would entertain an amendment to his motion that would also add a fine or some type of monetary sanction for someone who files a frivolous complaint and to amend the Ethics Ordinance to prohibit that sort of thing. Mr. Giuliani stated he would make that amendment and set the maximum fine of up to \$500.

Motion made by Mr. Giuliani and seconded by Ms. Cook-McDaniel to set a maximum dollar amount of \$500, that each violation will be determined on its own by the Commission; and that if a complaint was determined to be frivolous, the maximum fine would be \$500.

AYES: Mr. Rivera, Mr. Giuliani, Ms. Cook-McDaniel, Ms. Marrufo and Mr. Miranda

NAYES: None

The motion passed unanimously.

Ms. Firth stated that she would pull out the work San Antonio has done in defining a frivolous complaint and how the determination was made and send it to the Commission to look at and use as a starting point for discussion purposes and she would visit with the San Antonio City Attorney to see if they had actually gone through that process and if they've actually used that process.

Ms. Firth stated at the next meeting the next two items will be on the agenda and she will also add an item regarding discussion of future agenda items.

4. ADJOURNMENT

Motion made by Mr. Giuliani, seconded by Ms. Marrufo and unanimously carried to adjourn the meeting at 6:54 pm.

APPROVED:

January 13, 2016 AMM

Date